(29,505)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 955.

KANSAS CITY SOUTHERN RAILWAY COMPANY AND THE TEXARKANA & FORT SMITH RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

ROAD IMPROVEMENT DISTRICT NO. 3 OF SEVIER COUNTY, ARKANSAS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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1 **Caption.**

IN THE

SEVIER CIRCUIT COURT.

In the Matter of the Road Improvement District No. 3 of Sevier County, Arkansas, and Assessment of Benefits against the Property of THE KANSAS CITY SOUTHERN RAILWAY COMPANY and THE TEXARKANA & FORT SMITH RAILWAY COMPANY.

TRANSCRIPT.

Please Before the Honorable J. S. Steel, Special Judge, in the Trial of the Above-entitled Action.

E. K. Edwards and B. E. Isbell, Attorneys for Road Imp. Dist. No. 3.

James B. McDonough, Attorney for Railway Companies.

2 In the County Court of Sevier County, State of Arkansas.

[Title omitted.]

Objections of Railway Companies to Assessments.

[Filed Nov. 21, 1919.]

Come the Kansas City Southern Railway Company and the Texarkana and Fort Smith Railway Company and filed their objections and plea in writing against the assessments of benefits herein and against the extension of the boundaries of the said district upon the following grounds to wit:

1. The commissioners herein were and are without lawful authority to extend the boundaries of the said district and to include in said district the property of the said railroad companies.

2. Neither the said commissioners nor the county court have any lawful authority to find and declare that the property of the said railroad companies to wit: the Kansas City Southern Railway Company and the Texarkana Railway Company has been or will be benefitted by the proposed improvement.

3. The property of the said railroad companies will not be benefitted by the said improvement.

4. The said alleged benefits are unjust, unfair, confiscatory and void and deprive said railroad companies of their property without due process of law, and deny to said companies the equal protection of the laws contrary to section 1 of the fourteenth amendment of the Constitution of the United States, and the acts of said

3 Commissioners acting under the statutes of the State of Arkansas on the subject in assessing said benefits against the property of said railway companies are repugnant to said section of the constitution of *the constitution of* the United States above named.

5. Said assessments are an unlawful burden on interstate commerce contrary to section eight of Article one of the Constitution of the United States.

6. Said assessments are excessive, unfair, and unlawful and are repugnant to the sections and each of them of the Constitution of the United States above named.

Premises — the Kansas City Southern Railway Company and the Texarkana and Fort Smith Railway Company pray that said assessments against their property be corrected, set aside, canceled and held for naught. Kansas City Southern Railway Company, The Texarkana and Fort Smith Railway Company, by James B. McDonough, Their Attorney.

I, James B. McDonough on oath state that the matters and things set out above are true to the best of my knowledge and belief.

Subscribed and sworn to before me this 20th day of November, 1919. H. B. Wier, Notary Public. [Seal.] My commission expires July 28, 1921.

[File endorsement omitted.]

4 In the County Court of Sevier County, Arkansas.

[Title omitted.]

Prayer for Appeal and Affidavit.

[Filed Nov. 29, 1919.]

Come the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, and pray an appeal herein from the order of the County Court, fixing assessments of benefits against the property of the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, this appeal being from the judgment of the County Court, fixing said assessment of benefits, and said appeal being made within ten days from the judgment of the County Court in the premises.

The Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company adopt and make a part hereof, their written objections filed by said railroad companies in open court on the 21st day of November, 1919, said written objections being made a part hereof, as though set out in full herein.

The Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company allege that this appeal is not taken for delay, but in order that justice may be done to the Kansas City Southern Railway Company and the Texarkana & Fort Smith Rail-

way Company in the Matter of making assessments against the property of said railroad companies.

The said railroad companies above named state to the court that said railroad companies are engaged in Interstate Commerce.

5 The Texarkana & Fort Smith Railway Company operates in the State of Texas, and owns a part of the right of way in Sevier County, State of Arkansas, the Kansas City Southern Railway Company operates in the State of Arkansas, and other states. The two railroad companies in conjunction with other companies, operate a through line of railroad from Kansas City in the State of Missouri, to Port Arthur in the State of Texas, the said line of railroad enters the State of Arkansas from the State of Oklahoma in the County of Polk a short distance north of Rich Mountain, and leaves the State of Arkansas a short distance south of Ogden in Little River County, State of Arkansas, and the great majority of the traffic, including property and persons, over said line of railroad is interstate. The said railroad companies specifically state that the matters appealed from herein are the following:

1. The said assessment of benefits against the property of the said railroad companies is discriminatory in that said assessment levies and fixes upon the property of said railroad companies a local tax for the construction of a proposed highway, arbitrarily and without just cause, and fixes said amount in grossly unequal proportions upon the property of said railroad companies, and thereby deprives said railroad companies of their property without due process of law, and denies to them the equal protection of the law, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The said alleged assessment of benefits is an assessment against the business and property of the said railroad companies, including the interstate business of said railroad companies, and there-

6 fore said assessments are a burden upon interstate commerce, contrary to section 8 of Article 1 of the Constitution of the United States.

3. Said railroad companies allege that their property is not benefited within the meaning of the law, by the construction of said proposed highway, and therefore the levying of said assessments without benefit to the said railroad companies, taxes the property of said railroad companies without due process of law, and deprives them of the equal protection of the laws, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

4. The said railroad companies further allege that the levy of said assessments is unequal, unjust, illegal, discriminatory and void, and by reason thereof is repugnant to section 1 of the Fourteenth Amendment to the Constitution of the United States.

5. The said railroad companies further allege that the said act of the State of Arkansas known as the Alexander Law, as administered by the assessments herein complained of, is illegal and void, because its administration as herein done is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States,

and said administration thereby denies to the railroad companies the equal protection of the laws, and deprives them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6, The said railroad companies further allege that it is unlawful, discriminatory and unjust to assess benefits against the build-
7 ings of the said railroad companies, the said buildings being used largely in interstate commerce, and therefore said assessments are in violation of the railroad companies' rights under Section 8 of Article 1 of the Constitution of the United States.

Premises considered, the said railroad companies pray an appeal from the County Court of Sevier County to the Circuit Court of Sevier County, and further pray that said assessment be set aside and held for naught, and that said assessment be readjusted and reassessed, and that only the proper and just proportions, if any, be assessed against said property, and that no assessments be made in excess of the benefits received by said railroad companies, and their property. (Signed) The Kansas City Southern Railway Company, The Texarkana & Fort Smith Railway Company, By James B. McDonough, Their Attorney.

Affidavit.

STATE OF ARKANSAS,
County of Sebastian, ss:

I, James B. McDonough, on oath state that I am the attorney of the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, and that the matters and things set forth in the above and foregoing appeal are true, to the best of my knowledge and belief.

I further state that the special matters on which said appeal is taken are fully and clearly set forth in the above and foregoing and that said appeal is prosecuted not for delay but that justice may be done the said The Kansas City Southern Railway Company
8 and the Texarkana & Fort Smith Railway Company, and the above and foregoing appeal is hereby made a part of this affidavit for the purpose of showing the special matters on which the appeal herein is taken. (Signed) James B. McDonough.

Subscribed and sworn to before me this 28th day of November, 1919. J. Sam Wood, Notary Public. (Seal.) Commission expires Oct. 17, 1923.

[File endorsement omitted.]

9 In the Sevier County Court This the 21st Day of Nov., 1919.

[Title omitted.]

Order Approving and Confirming Assessment of Benefits.

Now on this day, an adjourned day of the regular October 1919 term of the Sevier County Court, and the day heretofore fixed and

designated by the Court as a day to hear any and all complaints against the assessments of benefits made against the several and particular tracts of land and other real property in said District by the Assessors for said District, come the Commissioners and Assessors for said District, in person and by their attorney E. K. Edwards and ask that said assessment of benefits be approved and confirmed by the Court.

And no person appearing before the Court and presenting any objections to the assessment of benefits, either orally or in writing, and it appearing to the court that heretofore on the 15th day of October, 1919, the Board of Commissioners for Road Improvement District No. 3 filed said assessment of benefits as made and certified to by the assessors for said District as required by law and that on the 15th day of October, 1919, an adjourned day of the October Term 1919, of this court, this court by proper order designated and fixed this day as a day for the hearing on the assessment of benefits made against the several particular tracts of land in said District.

And it further appearing to the Court that the Clerk of this Court has caused public notice to be published that said assessment of benefits has been filed in this court and calling upon all per-
10 sons, firms and corporations, and incorporated interests to appear before this court for the purpose of having any error adjusted or any wrongful or grievous assessment corrected, and that said notice has been published for two consecutive insertions in De Queen Bee, a weekly newspaper, having a general bona fide weekly circulation in Sevier County, Arkansas, the second insertion of same having been published more than five days prior to this date as shown by the proof of publication filed herein on this date sho-ing proof of publication of said notice for the time and in the manner required by law.

And said matter being presented to the Court upon the assessment of benefits so filed, the proof of publication filed herein, together with the other pleadings in said matter, and the Court having fully considered said assessment of benefits, and all matters relative thereon, finds that the lands and other real property in said district are greatly benefited by said improvement, and further finds that said assessments are justly and equitably made. And the Court hereby approves said assessment of benefits made against the several and particular tracts of land in said district, and is of the opinion that said assessment of benefits is fair, just and equal to all land owners in said district and should be approved by the Court.

It is therefore considered, ordered and adjudged by the Court that said assessment of benefits made by the Assessors for said District be and the same is hereby approved and confirmed by this Court, and the Clerk of this Court is hereby directed and instructed to spread said assessment upon the records of this Court as a permanent assess-
ment roll for said District.

11 It is further considered, ordered and adjudged by the Court that the assessment of benefits made against the Southwestern Telegraph, Telephone Company Southwestern Bell Telephone Com-

pany, Prairie Pipe Line Company, Western Union Telegraph Company, American Railway Express Company, Pullman Company and against the De Queen Telephone Exchange be approved and that the assessment of benefits against the Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company and against the De Queen & Eastern Railroad Company, as to the line of railroads of said respective companies, in said District by the Assessors for said District be approved and confirmed by the Court and the Clerk of this Court is hereby instructed and directed to spread same upon the records as a permanent assessment roll for said district.

This 21st day of November, 1919. T. O. Poole, County Judge.

12 In the Sevier County Court the 1st Day of December, A. D. 1919.

[Title omitted.]

Order Allowing Appeal.

Now on this day comes on for hearing the appeal of the Kansas City Southern R. R. Co., and the Texarkana & Ft. Smith R. R. Co. from the order of the Court approving the assessment of benefits filed herein made in the premises and it appearing to the Court that said petition and Bond for appeal was duly sworn to and the same fully complied with the law doth grant said appeal.

It is therefore by the Court considered, ordered and adjudged that said appeal of the Kansas City Southern R. R. Co. and the Texarkana & Ft. Smith R. R. Co. be and the same is hereby and in all things granted. T. O. Poole, County Judge.

13 **Assessor's Report.**

To the Board of Commissioners of Road District No. 3, Sevier County, Arkansas:

We, the undersigned, Board of Assessors of Road Imp. Dist. No. 3 of Sevier County, Ark., beg to repor- that pursuant to instructions heretofore given us by the Board of Commissioners of Road Imp. Dist. No. 3 of Sevier County, Ark., *and* we, as such Board of Assessors, and have assessed the benefits accruing to the lands, railroads, telegraph and telephone lines, pipe lines, electric light plant, express Company, Pullman car company and such other real property embraced in territory as described in your instructions and not embraced in boundaries of said Road Imp. Dist. No. 3, and benefited by reason of improvement to be made by said Imp. Dist. No. 3 as follows:

Name of proposed owner.	Lot.	Block.	Addition.	Value.	Benefits.	
K. C. S. Ry Co.	....	E½ 31	Braley.....	$150	75.00	$45
"	....	32	"	420	210	126
"	....	33	"	40	20	12
"	5	34	"	10	5	3
"	6	34	"	10	5	3
"	7	34	"	10	5	3
"	8	34	"	10	5	3
"	9	34	"	10	5	3
"	10	34	"	10	5	3
"	11	34	"	10	5	3
"	12	34	"	10	5	3
"	13	34	"	10	5	3
"	14	34	"	10	5	3
"	15	34	"	10	5	3
"	16	34	"	10	5	3
"	17	34	"	10	5	3
"	18	34	"	10	5	3
"	1	6	De Queen..	100	50	30
"	2	6	" ...	100	50	30
"	3	6	" ...	120	60	36
"	4	6	" ...	30	15	9
"	5	6	" ...	30	15	9
"	6	6	" ...	30	15	9
"	1	7	" ...	20	10	6
"	2	7	" ...	20	10	6
"	3	7	" ...	20	10	6
"	4	7	" ...	20	10	6

Name of proposed owner.	Lot.	Block.	Addition.	Value.	Benefits.	
K. C. S. Ry. Co.	5	E. ½ 7	De Queen..	20	10	6
"	6	7	" ...	20	10	6
"	7	7	" ...	10	5	3
"	8	7	" ...	10	5	3
"	9	7	" ...	60	30	18
"	N. W. ¼ N. E. ¼ West of Railroad in 19-8-31.....			400	200	
"	A strip 200 ft. along R. R. in 19-8-31			80	40	
"	S. W. ¼ N. E. ¼ West of K. C. S. Ry. in 19-8-31.....			600	300	
"	Right of Wat of K. C. S. Ry..			100	50	
"	W. 935 ft. of S. E. ¼ except R. of W. 19-8-31.....			1,600	960	
"	Main line 2 miles.....			54,000	7,000	3,520
"	Side track 9.75 miles.....			29,250	5,000	500
"	Buildings			46,365	9,270	

15 In the Sevier County Court, October Term, 21st Day of November, A. D. 1919.

Order Approving Assessment of Benefits.

In the Matter of Road Improvement District #3 of Sevier County.

Now on this, the 21st day of November, 1919, the date fixed for the hearing hereof, this cause coming on to be heard upon the special report of the Commissioners of Road Improvement District #3 of Sevier County and the assessment of benefits made by the Board of Assessors of said Road Improvement District No. 3 of Sevier County, of other real property not embraced within the boundaries of Road Improvement District No. 2 of Sevier County, which are benefited by reason of the improvement about to be made by said district, which assessment of benefits was filed with the said report of the said commissioners.

And it appearing that notice of the date of the hearing of said special report and assessment of benefits had been published in the De Queen Bee, a publication having a general weekly circulation in Sevier County, by two consecutive insertions, the last insertion being more than five days before the date fixed by the court for this hearing proof of which publication in due form was filed in the office of the clerk of this court, and calling upon the adjoining land owners affected by special report and assessment of benefits to appear and show cause why the boundaries of Road Improvement District No. 2 of Sevier County should not be extended so as to include the property so assessed, and to make any objections they may have to the assessment of the benefits so made and about to be made.

16 Now come the Commissioners and assessors for said Road Imp. District No. 3 in person and by their attorney E. K. Edwards, and comes Abe Collins and for himself and other property owners in the town of De Queen, Arkansas, objects to the assessment of benefits as made against the following described property, to wit:

All Locke Hights Addition to town of De Queen, Arkansas.

All of Rose Hill Addition to town of De Queen, Arkansas.

All of Blocks 1, 2, 13, 14, 31, 32, 33 and 34 of Braley's Addition to town of De Queen, Arkansas.

All of Blocks from 1 to 30 inclusive in Original Town of De Queen, Arkansas.

All of Blocks 1, 2, 3, 6, 7, 10 and 11 in Park Addition in town of De Queen, Arkansas.

All of Links Addition in Town of De Queen, Arkansas.

All of Hill Crest Addition in town of De Queen, Arkansas.

West Half of Southwest quarter of section 20 and the West half of Northwest Quarter of section 29; all in Township 8 South, Range 31 West.

And also comes the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company by their attorney, James B. McDonough, and files their written objections to the assessments made against the property of said Railway Companies, and this matter it submitted to the court.

The Court upon investigation and hearing finds that the lands, railroads, telegraph, telephone and pipe lines, and the express and Pullman car lines set out and described in said report and assessment of benefits are adjoining said improvement District, but are
17 not included in the boundaries thereof; that they are and will be benefited by reason of the improvement to be made by said improvement District and that the boundaries of said Road Improvement District No. 3 of Sevier County, Arkansas, should be so extended as to embrace said lands, railroads, telegraph, telephone and pipe lines, express and Pullman lines; the Court further finds, after due investigation that the assessments of benefits so made by the Board of Assessors and reported by the Commissioner of said Road Improvement District, accruing to the lands, railroads, telegraph, telephone and pipe lines, express and Pullman lines, by reason of the improvements to be made by said District is just, fair and reasonable except as to the lands above described to wit:

All Locke Heights Addition to town of De Queen, Arkansas.

All Rose Hill Addition to town of De Queen, Arkansas.

All of blocks 1, 2, 13, 14, 31, 32, 33 and 34 of Braley's Addition to town of De Queen, Arkansas.

All of blocks 1 to 30 inclusive in original town of De Queen, Arkansas.

All of blocks 1, 2, 3, 6, 7, 10 and 11 in Park Addition in De Queen, Arkansas.

All of Links Addition in town of De Queen, Arkansas.

All of Hill Crest Addition in Town of De Queen, Arkansas.

The West half South West Quarter Section 20, township 8 South, Range 31 West and the West half Northwest quarter Section 29, Township 8 South, Range 31 West.

And the Court finds the assessments as to same excessive and burdensome and that said assessment on said lands and other property in town of De Queen should be reduced 40%.

18 It is therefore by the Court considered, ordered and adjudged that the assessments and benefits so made against the said lands to-wit:

All Locke Heights Addition to Town of De Queen, Arkansas.

All Rose Hill Addition to town of De Queen, Arkansas.

All of Blocks 1, 2, 13, 14, 31, 32, 33 and 34 of Braley's Addition to town of De Queen, Arkansas.

All of Blocks 1 to 30 inclusive in original town of De Queen, Arkansas.

All of Blocks 1, 2, 3, 6, 7, 10, 11 in Park Addition in town of De Queen, Arkansas.

All of Links Addition in Town of De Queen, Arkansas.

All of Hill Crest Addition in Town of De Queen, Arkansas.

The West half South West Quarter, Section 20 Township 8 South Range 31 West, and the West Half Northwest Quarter Section 29, Township 8 South, Range 31 West.

And as against the De Queen Telephone Exchange be reduced 40% of amount of benefits originally made by said Board of Assessors.

It is further ordered and adjudged by the Court that the boundaries of said Road Improvement District No. 3 be and the same are hereby extended so as to embrace the following lands, lots, railroads, telegraph, telephones, pipe lines, express and Pullman line, to wit:

All Locke Heights Addition in town of De Queen, Arkansas.

All Rose Hill Addition to town of De Queen, Arkansas.

All of Blocks 1, 2, 13, 14, 31, 32, 33 and 34 of Braley's Addition in town of De Queen, Arkansas.

All of Blocks 1 to 30 inclusive in original town of De Queen, Arkansas.

19 All of Blocks 1, 2, 3, 6, 7, 10 and 11 in Park Addition in De Queen, Arkansas.

All of Links Addition in town of De Queen, Arkansas.

All of Hill Crest Addition in town of De Queen, Arkansas.

The West half of Southwest Quarter of Section 20 and the West Half of Northwest Quarter of Section 29, all in Township 8 South, Range 31 West.

All Section 32 and the South half of Section 33 Twp, 8 South Range 30 West; the N. E. ¼ Section 19; All of Sections 20 and 21; NW¼ NW¼ and the N½ SW¼ of Section 29; E½ of Section 30; The W½ and the SE¼ of Section 32; All in Township 8 South, Range 31 West, All of Sections 5, 8, 17 and 21; N½ of Section 27; W½ of Section 26; the N½ Section 35 and the N½ of Section 36, all in township 9 South, Range 31 West. All Frl. Sections 1 and 2 Fr. N½ of Sec. 3, the Frl. N½ of Section- 4, 5 and the Frl. N½ Section 6 all in Township 10 South, Range 30 West; Frl. S½ of Section 3; Frl. S½ of Section 4; and Frl. S½ of Section 5; all in Township 9 South, Range 29 West. Frl. Sections 2, 3, 4, 5 and 6, in township 10 South, Range 29 West; and to also embrace all that property of the Prairie Pipe Line Company so assessed by said Board of Assessors, and all property of Kansas City Southern Railway Company and Texarkana & Ft. Smith Railway Company so assessed by said Board of Assessors and all that property of the Pullman Company assessed by said Board of Assessors and all that property of the Western Union Telegraph Company assessed by said Board of Assessors, and all that property of the American Railway Express Company assessed by said Board of Assessors, and all that property of the Southwestern

20 Bell Telephone Company as assessed by said Board of Assessors and all that property of the Southwestern Telegraph and Telephone Company, as assessed by the said Board of Assessors, and all that part of the De Queen Telephone Exchange as assessed by the said Board of Assessors. And that said improvement district so extended shall embrace said lands. lots, railroads, telegraph, telephone and pipe lines, express and Pullman lines as fully and to the same extent as if originally included in the boundaries of said District.

It is further considered, ordered and adjudged by the Court that the assessment of benefits so made by the Board of Assessors of Road Improvement District No. 3 of Sevier County, and reported by the Board of Commissioners, as reduced by the Court as above mentioned, be and the same is in all things approved and confirmed.

21 **Clerk's Certificate.**

[Filed Dec. 2, 1919.]

STATE OF ARKANSAS,
County of Sevier:

I, W. H. Wardlaw, County Clerk and Ex-Officio Probate Clerk within and for the County and State aforesaid do hereby certify that the attached and foregoing 13 sheets of typewritten matter is a true and correct copy of the Order of the Court approving and confirming to assessment of benefits in the matter of Road Improvement District No. 3 of Sevier County, Arkansas made at its October Term on the 21st day of November A. D. 1919, duly recorded in Vol. Record 21 page 92, also the order of the court granting the petition and bond for appeal from said order of the Court approving and confirming the assessment of benefits of the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company in said Road Improvement District No. 3 Sevier County, Arkansas as made by the Court at its October Term on the 1st day of December, A. D. 1919 as duly recorded in Record Book #21 page 100, now on file in the County Clerk's office at De Queen, Sevier County, Arkansas.

In Testimony Whereof I hereunto set my hand and affix the seal of said Court this the 2nd day of December, A. D. 1919. W. H. Wardlaw, County Clerk. (Seal.)

[File endorsement omitted.]

22 In the Sevier Circuit Court.

[Title omitted.]

Demurrer.

[Filed Nov. 18, 1921.]

The commissioners of Road Improvement District No. 3 of Sevier County, M. L. Norwood, T. M. Gallaher and L. H. Norwood, demur to the matters and allegations set out in the affidavit and prayer for appeal made by the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, and for cause state;

1. That alleged cause No. 1 as set out in said affidavit for appeal does not state facts sufficient to constitute a defense against the said extension of the boundaries of said district No. 3 nor against the assessment of the real property and railroads of the said railway com-

panies, and is not responsive to objections raised and filed by said railway companies in the Sevier County Court.

2. That alleged cause No. 2, as set out in said affidavit for appeal does not state facts sufficient to constitute a defense against the said extension of the boundaries of said district No. 3, nor against the assessment of the real property and railroads of the said railway companies, and is not responsive to objections raised and filed by said railway companies in the Sevier County Court.

23 3. That alleged cause No. 3, as set out in said affidavit for appeal does not state facts sufficient to constitute a defense against the said extension of the boundaries of said district No. 3 nor against the assessment of the real property and railroads of the said railway companies, and is not responsive to objections raised and filed by said railway companies in the Sevier County Court.

4. That alleged cause No. 4, set out in said affidavit for appeal does not state facts sufficient to constitute a defense against the extension of the boundaries of said district No. 3, nor against the assessment of the real property and railroads of the said railway companies, and is not responsive to objections raised and filed in said railway companies in the Sevier County Court.

5. That alleged cause No. 5, as set out in said affidavit for appeal does not state facts sufficient to constitute a defense against the said extension of the boundaries of said district No. 3, nor against the assessment of the real property and railroads of said railway companies, and is not responsive to objections raised and filed by said railway companies in the Sevier County Court.

6. That alleged cause No. 6 as set out in said affidavit for appeal does not state facts sufficient to constitute a defense against the said extension of the boundaries of said district No. 3, nor against the assessment of real property and railroads of said railway companies and is not responsive to objections raised and filed by said railway companies in the Sevier County Court.

Wherefore, etc. B. E. Isbell, E. K. Edwards, Attorneys for Road Improvement District No. 3.

[File endorsement omitted.]

24 In the Sevier Circuit Court.

[Title omitted.]

Appeal Bond.

[Filed Apr. 7, 1921.]

Whereas, The Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company have prosecuted an appeal from the order and judgment of the County Court in the matter of assessments of benefits against the property of said railroad companies by the County Court of Sevier County, and

Whereas the record in said cause in the County Court shows that an appeal bond was given, and

Whereas no appeal bond is now among the papers in said case, and

Whereas the Texarkana & Fort Smith Railway Company and the Kansas City Southern Railway Company prosecuted their appeal under Section 14 of the Act known as the Alexander Law.

Now, Rherefore, the undersigned bind and obligate themselves to hold Road Improvement District Number Three harmless by reason of the appeal of the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company in this case. If the Texarkana & Fort Smith Railway Company and the Kansas City Southern Railway Company shall duly prosecute their appeal and if said railroad companies shall perform the final judgment of the court on said appeal, and if the said Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company shall duly perform the final judgment of said court on said appeal then this obligation shall be null and void; otherwise the same shall remain in full force and effect. The Kansas City Southern Railway Company, By James B. McDonough, its Attorney. The
25 Texarkana & Fort Smith Railway Company, By James B. McDonough, Its Attorney. The American Surety Company of New York, By H. K. Ames, Atty-in-Fact. (Seal.)

[File endorsement omitted.]

26 In the Sevier Circuit Court.

[Title omitted.]

Application for Order Approving Appeal Bond.

[Filed Apr. 7, 1921.]

Come the Texarkana & Fort Smith Railway Company, and the Kansas City Southern Railway Company, and show to this Honorable Court and to the Judge thereof, to wit: Judge J. S. Steel, that said railroad companies have duly appealed from the order of the County Court, of Sevier County, fixing assessments against the property of said railroad companies in Road Improvement District Number Three of Sevier County, Arkansas, and that said appeal was duly prosecuted and the papers duly filed in the circuit court and that said cause is now pending in said circuit court of Sevier County, and has been continued and is now on the docket of that court ready for trial at the July term of said Court. The record in the County Court in said cause shows that an appeal bond was given. That said railroad companies were of the opinion and belief that a bond had been executed, but no bond can now be found among the papers in said cause. The said railroad companies respectfully show that under section 14 and the other sections of the act known as the Alexander Law, an appeal by a property owner supersedes the collection of the

taxes and assessments against his property until the appeal is disposed of. The Collector of Sevier County is now demanding the assessments and taxes from the said railroad companies
27 claimed to be due to said Road Improvement District Number 3 on the ground that no appeal bond has been given and upon the further ground that said law requires him to receive no taxes from the railroad companies unless said taxes due said Improvement District are paid at the same time. The said railroad companies respectfully show that they have tendered all their taxes due in Sevier County, including all Improvement Districts except this one and they have duly prosecuted their appeal in this one and said railroads hereby tender and give a sufficient bond made by a surety company, which said bond protects said Road Improvement District Number Three.

Premises considered the said Railroad Companies pray that the Judge of this Court make an order approving said bond and directing that the same be filed and further authorizing and directing the collector of taxes to make no further effort thereafter to collect the taxes in favor of said Road Improvement District Number Three. The said collector has refused to collect the general taxes on the sole ground that the taxes for said Improvement District were not received and as said railroad companies understand, because no order had been made allowing him to waive for the present the collection of said taxes due said Road Improvement District Number Three.

Premises considered the said railroad companies pray the Judge of this court to approve the bond which is tendered herewith and direct that the same be filed with the papers in this case. (Signed) The Kansas City Southern Railway Co., By James B. McDonough, Its Attorney. (Signed) The Texarkana & Fort Smith Railway Co., By James B. McDonough, Its Attorney.

[File endorsement omitted.]

28 In the Sevier Circuit Court.

[Title omitted.]

Order Approving Bond on Appeal.

[Filed Apr. 7, 1921.]

On this day is presented to the undersigned Judge of the Ninth Judicial Circuit of Arkansas, the application for an order approving the appeal bond and also the appeal bond. The Judge being well and sufficiently advised in the premises, hereby approves and appeal bond and it is hereby ordered and directed that said appeal bond be filed by the clerk with the papers in this cause, and that a copy of this order be given to the collector of the County, to the end that he may know that an appeal bond has been duly made and approved and filed in this cause, and this order, when duly filed,

will be authority, relieving the Sheriff at this time from the collection of taxes due from said railroad companies to Road Improvement District Number Three of Sevier County. The rights of all parties hereto will be duly preserved and heard at the trial of said cause as the same now stands in the Circuit Court at DeQueen. (Signed) James S. Steel, Judge of the Ninth Judicial Circuit of Arkansas.

[File endorsement omitted.]

29 In the Sevier Circuit Court.

[Title omitted.]

Demurrer to the Objections made by the Kansas City Southern Railway Co. and Texarkana and Fort Smith Railway Company.

[Filed Nov. 18, 1921.]

Come M. L. Norwood, T. M. Gallaher and L. D. McCown, as Commissioners of Road Improvement District No. 3 of Sevier County, Arkansas, and filed this their demurrer to objections Nos. 1, 2, 3, 4, 5, and 6, made and filed herein by the Kansas City Southern Railway Company and the Texarkana and Fort Smith Railway Company, and for grounds of demurrer, state;

That said objection No. 1 made by said railway companies does not allege facts sufficient to constitute a defense herein.

That said Objection No. 2 made by said railway companies does not allege facts sufficient to constitute a defense herein.

That said Objection No. 3 made by said railway companies does not allege facts sufficient to constitute a defense herein.

That said Objection No. 4 made by said railway companies does not allege facts sufficient to constitute a defense to the assessments made against the property of said railway companies.

That said objection No. 5 made by said railway companies does not allege facts sufficient to constitute a defense to the assessments made against the property of said railway companies.

That said Objection No. 6 made by said railway companies does not allege facts sufficient to constitute defense to the assess-
30 ments complained of herein. (Signed) E. K. Edwards, Attorney.

[File endorsement omitted.]

31 In the Sevier Circuit Court, July Term 1921, November 18th, 1921.

[Title omitted.]

Order Sustaining Demurrers in Part.

Now on this day comes Road Improvement District No. 3 of Sevier County by its attorneys, B. E. Isbell and E. K. Edwards and comes also the Kansas City Southern Railway Co. and the Texarkana & Ft. Smith Railway Co., by their attorney, James B. McDonough, and the demurrer of the said Road Improvement District No. 3 to the objections and the exceptions of said railway companies to the assessments made upon their property by said improvement district, and the demurrer of said road improvement district to the special matters set out in the affidavit and prayer for appeal from the County Court to this Court, made and filed by said railway companies, are at this time submitted to the Court.

And the court finding that the assessment of benefits made against all the property within road Improvement District No. 3 of Sevier County, including the assessments against the property of said railway companies, have been fixed, approved and confirmed by an Act of the General Assembly of the State of Arkansas, and having heard the argument of counsel, doth sustain said demurrers, and both of them, except to the allegations in said objections that said assessments upon the property of said railway companies are discriminatory, arbitrary and confiscatory, and except as to allegations made in said affidavit and prayer for appeal that the assessment of
32 benefits and the levy of taxes thereunder are discriminatory, arbitrary and confiscatory.

O. K. (Signed) James S. Steel, Judge.

33 In the Sevier Circuit Court July Term, 1921, Nov. 18th, 1921.

[Title omitted.]

Judgment.

Now on this day came the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, by their attorney, James B. McDonough; comes also the Road Improvement District No. 3 of Sevier County, Arkansas, by their attorneys, E. K. Edwards and B. E. Isbell, and both parties announcing ready for trial the said railway companies present to the court, their written objections to the assessment of benefits made upon their property located within said road improvement district and exhibit and present to the court the affidavit and prayer for appeal from the county court to this court, in which the said railway companies set out the special matters appealed from the said county court to this court.

And the court proceeded to hear the evidence, and the testimony of witnesses, from which the court finds that the assessments of benefits as made by the assessors of the said improvement district and as confirmed by Act No. 98 of the General Assembly of the State of Arkansas approved February 7, 1920, do not exceed the benefits which will accrue to the property of the said railway companies, its main tracks, sidetracks, buildings, and other real property lying within the district, and that the assessments of benefits against the said property of the said railway companies in said district
34 does not exceed the assessments against other property similarly located and situated in said district; that the action of the said assessors in valuing and assessing the benefits against the property of said railway companies in said district was not arbitrary nor discriminatory; that the said act of the said General Assembly in assessing and confirming the benefits as made against all property in said improvement district is not arbitrary nor discriminatory; The court further finds that the assessment of benefits so made against the property of the said railway companies is fair and equitable and is not excessive and confiscatory as alleged by the said railway companies; but the same have been duly, legally and fairly made, and properly confirmed by the General Assembly.

And the court further finds that the said railway companies have not paid the assessment of benefits for the year 1920 and that such assessments should be paid when the assessment for 1921 *are* paid and collected.

It is therefore considered, ordered and adjudged by the court that the said Kansas City Southern Railway Company and the said Texarkana & Fort Smith Railway Company take nothing by reason of their objections to said assessments or by reason of the special matters set forth in their affidavit for appeal nor by reason of their appeal from the judgment of the County to this court.

It is further considered, ordered and adjudged that said assessments of benefits be and the same are hereby found to be valid liens upon the property of said railway companies so assessed by the said assessors in said improvement district and confirmed by the said General Assembly; that the clerk of this court shall make
35 out and certify to the clerk of the county court this judgment to the end that the proper order may be made by said County Court to properly execute its judgment heretofore made in extending the taxes assessed upon benefits against the said property of the said railway companies, such extensions to be made so as to include in the taxes for the year 1921, the taxes that should have been collected against the said property for the year 1920, and which were not paid and collected by reason of the pendency of this appeal.

36 In the Sevier Circuit Court.

[Title omitted.]

Motion for a New Trial.

[Filed Nov. 19, 1921.]

Come the Texarkana and Fort Smith Railway Company and the Kansas City Southern Railway Company, and move the Court for a new trial herein upon the following grounds, to wit:

1.

The court erred in sustaining the demurrer of the Commissioners of Road Improvement District No. 3 and said Road Improvement District to the matters set out in the affidavit for appeal from the order of the County Court.

2.

The court erred in sustaining any part and each subdivision of said demurrer.

3.

The court erred in not overruling said demurrer.

4.

The court erred in sustaining the demurrer of the Board of Commissioners to the objections made by the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company.

37 5.

The Court erred in sustaining any part and every part of said demurrer.

6.

The court erred in excluding the following question and answer, propounded to the witness, E. Phelps.

"Q." Distributed upon the main line mileage basis, what do the benefits amount to per main line mile within the district?
"A." $10,582.00 per mile."

7.

The court erred in excluding the following question and answer, propounded to the witness, E. Phelps:

"Q. Is it possible for side tracks or buildings, as such, to be benefited by an improvement of this character?

"A. No. Side tracks and buildings are merely appurtenances to the main line. The benefit, if any, can only attach to the property as one single entire operating unit. If the benefit is such as to result in an addition to the value of the property, the addition of value is to the property as an entirety, and not to any particular part."

8.

The court erred in excluding the following question and answer, propounded to the witness, E. Phelps:

"Q. Suppose there should be an oil field developed on the line of the Kansas City Southern Railway in Sevier County, and that in this oil field there would only be two miles of the main track. Then suppose that the shipments of oil transported by the company would add to its net revenue the sum of say $200,000.00 per
38 annum. Would the value this added attach itself to the two miles within the oil field, or would it be spread over the entire line?

"A. It would be spread over the entire line."

9.

The court erred in excluding the following question and answer propounded to the witness E. Phelps:

"Q. In the assessment of railroad property generally, how is the unit value distributed as between counties?

"A. For the purpose of general taxation, it is usually distributed upon the main line mileage basis."

10.

The court erred in excluding the following question and answer propounded to the witness, E. Phelps:

"Q. How in Arkansas?

"A. On the main line mileage basis as to road bed and rolling stock, side track and buildings are all located to the counties where situated."

11.

The court erred in excluding the following question and answer, propounded to the witness, E. Phelps:

"Q. In the illustration I just used, suppose a road 800 miles long two miles of which was situated in an oil field which contributed $200,000.00 to the net revenue of the road, how much would that add to the value of the road within the oil field.

"A. It would add $250.00 per mile per year to the net revenue of the road as a whole. It would add $500.00 per mile per
39 year to the net earnings of the portion within the oil field, which if a permanent addition and capitalized at 6% would increase the capital value of that portion of the line within the oil field by the sum of $8,333.00."

12.

The court erred in excluding the following question and answer propounded to the witness, E. Phelps:

"You stated there were 2.01 miles in Road Improvement District No. 3. How many main lines miles in the Kansas City Southern System?
"A. 777.15 miles. The portion within the district is approximately one fourth of one per cent of the whole."

13.

The court erred in excluding the following question and answer propounded to the witness E. Phelps:

"Q. In order for the property of the Kansas City Southern Railway within the limits of Road Improvement District Number 3, to be benefited $21,270 how much would the entire line have to be benefited.
"A. $8,508.00."

14.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. How do you arrive at that conclusion?
"A. The benefit within the district is one fourth of one per cent of the whole benefit. One fourth of one per cent of $8,508.00 is $21,270.00."

40 15.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. What is meant by 'operating ratio'?
"A. It is that percentage of the gross revenue which is required to meet operating costs and taxes."

16.

The court erred in excluding the following question and answer propounded to the witness, E. Phelps:

"Q. What is the percentage remaining after operating expenses and taxes are paid called?"
"A. Net, or profit."

17.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. What is the operating ratio of the K. C. S. Ry.?
"A. The average for the five years period ending December 31, 1910, was 76.27%."

18.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. Suppose the construction of the highway in Road Improvement District No. 3 should result in an increase of $1,000 per year in the gross revenues of the Kansas City Southern Railway, how much of this sum would be net, or profit?

"A. If the five year average operating ratio were maintained, the net would be $237.30."

19.

The court erred in excluding the following question and
41 answer propounded to the witness, E. Phelps:

"Q. How much would this be per mile of road?
"A. 30½ cents.

20.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. How much within the district?
"A. .61 cents."

21.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. If you capitalized the sum of .61 cents 6%, how much of an addition would it make to the value of the property within the district?
"A. $10.17."

22.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. If the additional gross revenues amounted to $10,000.00 per annum, how much would be the benefit within the district?
"A. $101.70."

23.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. How much benefit if the additional gross earnings were $50,000 per year?
"A. $508.50."

42

24.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. How many cars of strawberries moving from De Queen to Kansas City at the present rate of $1.27 per hundred, and minimum weight of 17,000 pounds would be required to produce gross revenue of $50,000.00?"
"A. Approximately 232 cars."

25.

The court erred in excluding the following question and answer, propounded to the witness E. Phelps:

"Q. How many cars of cantaloupes moving fro De Queen to Kansas City at the present rate of .56 per cwt. minimum weight, 20,000 pounds would be required to produce gross revenue of $50,000?
"A. Approximately 446 cars."

26.

The court erred in excluding the evidence offered to be introduced by the said railroad companies to each of the questions above set forth, which questions were propounded to E. Phelps.

27.

The court erred in not setting aside said assessment of $21,270.00 entirely, on the ground that said assessment was arbitrary, illegal and confiscatory and deprived the said railroad companies of their property, without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

28.

The court erred in not holding that the said illegal and unlawful assessment was a burden upon Interstate Commerce, in violation of Section 8 Article 1 of the Constitution of the United States.

43

29.

The court erred in refusing to hold that said assessment was illegal and void upon the first ground set forth in the prayer and affidavit of appeal of the said railroad companies, which said first ground is made a part hereof, as though set out in full.

30.

The court erred in refusing to hold that said assessment was a burden upon Interstate Commerce, as set out in paragraph 2 of the prayer, and affidavit for appeal, which said paragraph 2 is made a part hereof, as though set out in full herein.

31.

The court erred in refusing to sustain point 3 in paragraph 3 of the prayer of said railroad companies for an appeal and the affidavit for an appeal, as the evidence fully showed herein that the property of the said railroad companies would not be enhanced in value in any way, and that said property would not be benefited, and therefore said assessment deprived said railroad companies of the equal protection of the laws, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

Said paragraph 3 in the affidavit and prayer for appeal is hereto referred to and made a part hereof, as though set out in full herein.

32.

The court erred in not sustaining the contention of the said railroad companies, as set forth in paragraph 4 of said prayer for
44 appeal, and affidavit for appeal, on the ground that the said assessments were unequal, unjust, discriminatory, illegal and void, because repugnant to section 1 of the Fourteenth Amendment to the Constitution of the United States. Said paragraph 4 is here referred to and made a part hereof, as though set out in full.

33.

The court erred in not sustaining the contention of said railroad companies as set forth in paragraph 5 of the prayer and affidavit for appeal. Said paragraph 5 is here — to and made a part hereof as though set out in full.

34.

The court erred in refusing to sustain the contention of said railroad companies as set forth in paragraph 6 of the affidavit and prayer for appeal, which said paragraph is hereto referred to and made a part hereof, as though set out in full.

35.

The said railroad companies respectfully submit that it becomes a question of law and a question of grave concern, as to whether the regular judge, to wit: The Honorable J. S. Steel, was not disqualified in this cause.

36.

The court erred in refusing to hold that there was a double assessment upon the property of the Texarkana & Fort Smith Railway Company and the Kansas City Southern Railway Company and each of them.

37.

The court erred in refusing to set aside that part of the as-
45 sessment of said assessors which assessed against the buildings of said railroad companies benefits amounting to $9,270.00.

38.

The court erred in holding that the value of said buildings was not included in the main line mileage and that said building were not included in the main line mileage.

39.

The court erred in refusing to set aside the assessment of benefits amounting to $5,000.00 against the side tracks of said railway companies.

40.

The court erred in refusing to set aside benefits amounting to $14,270 against the side tracks and the buildings, said side tracks and said buildings being included in the main line assessment.

41.

The court erred in refusing to set aside the assessment of $7,000.00 against the two miles of main line.

42.

The court erred in upholding the said total assessment which amounts to the sum of $21,270.00 against 2.1 miles of the line of railroad of said railroad companies, which amount to an assessment in excess of $10,500.00 per mile, which said assessment is illegal, confiscatory, unjust and discriminatory, and deprives said railroad companies and each of them of their property without due process of law, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

46 43.

The court erred in not striking from said assessment, the benefits of $9,270.00 against the so-called buildings of said railroad companies.

44.

The court erred in not striking from said assessment, the benefits amounting to $5,000.00 assessed against the so-called sidetracks of said railroad companies.

Premises considered, the plaintiffs, The Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, pray that the decision and judgment of the court, in confirming said assessment be set aside, and that a new trial be granted. (Signed) James B. McDonough, Attorney for the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company.

[File endorsement omitted.]

47 In the Sevier Circuit Court, July, 1921, Term, This 22nd Day of November, 1921.

[Title omitted.]

Order Overruling Motion for New Trial.

On this day comes the Kansas City Southern Railway Company and the Texarkana and Fort Smith Railway Company by its Attorney, James B. McDonough and files its motion for a new trial in this action, which motion is by the court overruled, to which action and ruling of the court the plaintiffs except, and thereupon prayed and was granted an appeal to the Supreme Court, and given ninety days in which to file its Bill of Exceptions.

48 In the Sevier Circuit Court.

[Title omitted.]

Bill of Exceptions.

[Filed Jan. 12, 1922.]

Be it remembered, that on the 18th day of November, 1921, and on a day of the regular term of the July term of the circuit court of Sevier County, State of Arkansas, the above entitled cause came on for a hearing. The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company appeared by their attorney, James B. McDonough, and the Board of Commissioners of

Road Improvement District No. 3 and Road Improvement District No. 3 and the Commissioners thereof appeared in person and by their attorneys, E. K. Edwards and B. E. Isbell. Both parties announced ready for trial. The said cause came on for hearing upon the assessment made by the Board of Assessors and upon the objections in writing of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, which said objections were duly filed before the Commissioners, and in the County Court, as required by law. The said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company duly filed their written objections, as required by law, and duly prosecuted their appeal on said objections from the County Court to this court. The said assessors completed their assessment for the District, and delivered said assessment showing the assessments against The Texarkana & Fort Smith Railway Company and The Kansas City Southern Railway Company, to the Board of Commissioners, and the Commissioners filed the same in the office of the County Clerk, as required by law, and the said The Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company then filed in said court their objections in writing, as required by law. The County Court confirmed the assessments, and within the time allowed by law, the said The Texarkana & Fort Smith Railway Company and The Kansas City Southern Railway Company took an appeal from the order of the county court, confirming said assessments to this court. On the proceedings before said assessors and the county court, and the appeal and written objections of the said railway companies, this trial was had.

49

Each of the parties to this controversy, to maintain the issues, introduced the testimony shown below. Said testimony was taken down in short hand, and afterwards transcribed, and certified to by the official shorthand reporter of the court, Allen Watkins. The said testimony, which is fully set out below, contains all of the evidence in said cause. The said evidence, being all of the evidence in this cause, is in words and figures as follows:

50

In the Sevier Circuit Court.

No. 844½.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Plaintiff,

versus

ROAD IMPROVEMENT DISTRICT NUMBER 3, Defendant.

Be it remembered, that on the 18th day of November, 1921, same being a day of the November, 1921, adjourned term of the regular July, 1921, term of the Sevier Circuit Court, came on to be heard the above numbered and styled cause before the Honorable James S. Steel, regular judge of the Sevier Circuit Court, present and presiding, and sitting as a jury, whereupon the following evidence was

introduced, objections made, exceptions saved and other proceedings had and done as follows, to wit:

Present: James B. McDonough, Counsel for plaintiff; B. E. Isbell and E. K. Edwards, Counsel for defendant.

51 The plaintiff, to sustain its issues, introduced the following evidence:

JACOB BROWN, called by the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. McDonough:

Q. Mr. Brown, you were one of the assessors in Road Improvement District Number 3, were you?
A. Yes sir.
Q. You live here in De Queen?
A. Yes sir.
Q. How long have you lived here?
A. Twenty years.
Q. What is your business?
A. I am a groceryman.
Q. Have you ever been engaged in the real estate business? buying and selling real estate as a real estate agent?
A. No sir.
Q. Do you own real property in Road Improvement District Number 3?
A. No sir, not now.
Q. Who were the other assessors with you?
A. Walter Grady and Rupert Steel.
Q. Did you ever have any experience in the operation of a railroad?
A. No sir.
Q. Did you ever own or operate a railroad?
A. No sir.
Q. Or any part of one?
A. No sir.

52 Q. Have you had any experience in valuing railroad property as railroad property?
A. No sir.

Q. On what basis did you assess the lots and blocks in the town of De Queen in this Road Improvement District Number 3?
A. We assessed it on the zone basis.
Q. Just describe fully how you made the assessments on property other than property used in actual railroad service. I am asking you first as to non-railroad property, that is, lots and blocks that are not used in railroad business; and then after that I want to ask you about railroads.
A. Well, the commissioners advised us how much benefits they wanted to raise in the districts and we found the rate it would take and divided the districts into zones according to the distance to the

proposed road and made our assessments accordingly to raise the stipulated amount of benefits.

Q. You, yourself, did not determine the amount of money necessary to be raised to construct the road?

A. No sir.

Q. You were advised as to the amount of money necessary to construct the road by the commissioners?

A. Yes sir.

Q. And then after getting that you proceeded to make such assessments against all property as would raise that amount of money?

A. Yes sir.

Q. Was it or was it not your purpose, then, in making the assessments to make such assessments as would yield the amount which the commission stated was necessary to build the road?

A. Yes sir.

Q. Do you remember what that was?

53 A. Well, approximately, I believe, about five hundred fifty thousand dollars.

Q. Do you remember the length of the road?

A. Approximately eighteen miles.

Q. How much of it was in Sevier County?

A. All of it.

Q. Did it extend to the east line of Sevier County?

A. Yes sir.

Q. Did you have before you the plans and specifications, showing what kind of road it was to be?

A. Well, not officially, no sir.

Q. What kind of a road did you have in mind when you made the assessments at such sums as would raise the necessary money? a hard-surface road, a graveled road, or what kind of a road?

A. It had never been definitely told us; of course we knew indirectly what kind of a road it was going to be.

Q. Why, in making the assessments so as to raise enough money to build the road, did you do that? Why did you follow that course?

A. Well, because it was the course I followed in assessing other districts and the course I had found they had used in other counties near by.

Q. You hadn't, yourself, thought out the plan?

A. No sir, not originally.

Q. You had gotten it from other sources?

A. Yes sir.

Q. The main purpose was to make such an assessment as would yield the amount of money necessary to build the road?

54 A. Yes sir.

Q. In lining out the districts as to zones as non-railroad property, including the property not used in railroad operations, how many zones did you have?

A. Three, I think, in this district.

Q. And what assessments of benefits were made in these different zones?

A. I think in the first zone sixty per cent of our equalized value, and in the second zone fifty, and the third zone forty.

Q. Explain what you mean by that.

A. On a hundred dollar valuation we placed a sixty dollar benefit in the first zone; in the second zone a fifty dollar benefit against a hundred dollars, and in the third zone forty.

Q. How did you arrive at the value of that property?

A. As a basis we took the assessed valuation generally.

Q. By assessed valuation you mean the valuation assessed for general taxing purposes?

A. Yes sir.

Q. If a forty acre tract was assessed at two hundred dollars for general taxing purposes you generally took that as a basis of your valuation?

A. Generally, yes sir.

Q. Did you raise or lower that valuation at any time?

A. Yes sir, at times we did, that is, we didn't raise or lower the valuation; if we thought a forty next to us assessed at a hundred dollars was worth as much as the other, we put the benefits the same on both forties.

Q. Did you do that by increasing the valuation of the
55 lower valued forty?

A. Not always, no sir.

Q. Did you increase the benefits so as to make the benefits equal?

A. Sometimes we lowered the benefits on the higher; in other words we endeavored to equalize the benefits between the different parcels.

Q. Did you take into consideration farm improvements, such as buildings, dwellings, and out-houses?

A. Yes sir.

Q. How did you take that into consideration?

A. We counted them improvements; improved lands are worth more than unimproved lands.

Q. Is that the only answer? What I want to know is whether or not you attempted to value the improvements.

A. No, we didn't unless we knew there had been a new building put on the place since the assessment had been made.

Q. I am speaking, *how*, generally of the first assessment. We may go to the other assessments afterwards.

A. No, we just took in generally the assessed valuation and generally accepted the assessment as made by the assessor of the county.

Q. For general taxing purposes?

A. Yes sir.

Q. And did not go specifically into the matter of valuing the buildings on the property?

A. No sir.

Q. If a forty acre tract, for illustration, was unimproved—
56 not in cultivation—and another forty acre tract was by it, side by side, what was your plan with reference to the two forty acre tracts, the one not in cultivation and the other in cultiva-

tion, being the same character of land except one was in cultivation and the other not in cultivation?

A. We generally let it go as it was assessed, and levied the benefits accordingly.

Q. If you found them value- the same on the books did you then value the assessments or assess the benefits the same?

A. No sir, we didn't aim to; we might have done it in some instances, but we always aimed to put the benefits a little more on the improved lands.

Q. Did you go over the district personally, you and the other assessors, and examine the land?

A. Not parcel by parcel; I have been over the whole district, and by questioning people in regard to different parcels that we didn't know about.

Q. You made a return of your assessments, you and the other assessors?

A. Yes sir.

Q. And filed it with the Commission or County Court, did you?

A. Yes sir.

Mr. McDonough: I would like to offer that in evidence at this point. It is the record, and I have always been in doubt as to whether those records, themselves, ought to be introduced.

Mr. Edwards: We make no objection.

Mr. McDonough: We can just consider it in evidence?

Mr. Edwards: Yes sir.

Return of assessments above referred to is here introduced in evidence.

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
L. N. Howerton	NE NE	25	8	31	..	40	120	80
M. E. Barrow	SE NE	..	..	..	..	40	250	100
P. Daniels	NW NE	..	..	..	..	40	240	96
Dierks Lbr. &c. Co.	SW NE	..	..	..	..	40	150	80
S. G. Cecil	E½ NW	..	..	..	..	80	300	160
Fannie Campbell	W½ NW	..	..	..	..	80	300	160
James A. Goss	N½ SW	..	..	..	2	80	320	200
W. F. Woods	SW SW	..	..	..	..	40	260	130
E. Haughey	SE SW	..	..	..	..	40	100	100
E. Hendricks	NW SE	..	..	..	..	40	120	100
E. Haughey	SW SE	..	..	..	..	40	350	175
E. Hendricks	NE SE	..	..	..	..	40	120	100
Thos. J. Nalley	SE SE	..	..	..	..	40	200	100
Fannie Campbell	E½ NE	26	8	31	3	80	300	160
Sarah A. Snapp	W½ NE	..	..	..	3	80	400	160
Same	E½ NW	..	..	..	..	80	300	200
W. W. McReynolds	W½ NW	..	..	..	..	80	400	160
J. K. Barr Ext.	SW¼	..	..	..	..	160	500	360
James A. Goss	NE SE	..	..	..	..	40	120	100
J. K. Barr Est.	W½ SE	..	..	..	..	80	300	200
Smith & Woods	SE SE	..	..	..	..	40	100	100
F. D. McClanaham	N½ NE East of Bear Creek	27	8	31	..	73	350	160
A. K. Allison Est.	N½ NE W. Creek	..	..	..	..	7	20	20
F. D. McClanahan	N½ SW NE	..	..	..	..	20	100	50
W. A. Keys	S½ SW NE	..	..	..	..	20	100	50
W. W. McReynolds	SE NE	..	..	..	..	40	120	100
W. A. Keys	Frl. E½ SW South of Bear Creek	..	..	..	..	20	90	50

N. J. Craig	E½ NW North of Creek	..	..	..	..	60	350	175	
W. D. Fields	E½ NW NW	..	..	..	..	20	100	50	
W. D. Fields	W½ NW NW	27	8	21	..	20	150	75	
Unknown	SW NW North Bear Creek	..	..	..	..	13.25	60	30	
D. E. Moon	SW NW South of B. C.	..	..	..	..	16.75	70	35	
W. A. Keys	N½ NE SW	..	..	..	..	20	100	60	
D. E. Moon	S½ NE NW	..	..	..	..	20	100	60	
Same	NW SW	..	..	..	..	40	250	150	
E. A. Herring	SW SW	..	..	..	..	40	200	120	
D. E. Moon	SE SW	..	..	..	..	40	200	120	
E. L. Holland	All NE SE except 148 yds. N & S by 131 yds. E & W in NW cor.	..	..	..	..	36	300	150	
W. A. Keys	148 yds. N & S by 131 yds. E & W NW cor. NE SE	..	..	..	..	4	20	10	
Same	NW SE	..	..	..	..	40	240	120	
D. E. Moon	S½ SE	..	..	..	..	80	550	275	
A. J. Ballow	E½ NE	28	8	31	1	80	400	200	
E. Hendrix	NW NE	..	..	..	..	40	400	200	
H. J. Jergen	SW NE	..	..	..	..	40	400	200	
J. W. Gardin	N½ NW except NE NE NW	..	..	..	..	70	650	325	
H. J. Jergen	NE NE NW	..	..	..	..	10	50	25	
Same	SE NW	..	..	..	..	40	150	100	
59 C. E. Bailey	N½ SW	..	..	..	..	80	800	400	
Same	SW SW	..	..	..	..	40	200	200	
J. M. Campbell	SE SW	..	..	..	..	40	400	200	
A. J. Ballow	N 3/20 NE SE	..	..	..	..	6	60	30	
A. B. Garrett	S 17/20 NE SE	..	..	..	..	34	200	100	
H. J. Jergen	NW SE	..	..	..	..	40	300	150	
J. M. Campbell	SW SE	..	..	..	..	40	360	180	
Unknown	SE SE	..	..	..	..	40	200	100	

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	G. A. Galloway	N½ SW NW	..	..	..	..	20	150	75
	Same	SE SW NW	..	..	..	..	10	50	25
	Church	SW SW NW	..	..	..	..	10	..	..
	H. C. Townsend	W⅝ NE NE	29	8	31	1	25	150	75
	Chas. Friend	E ⅜ NE NE	..	..	..	..	15	100	75
	H. C. Townsend	NW NE	29	8	31	1	40	250	125
	O. P. Harkness	N½ SW NE	..	..	..	..	20	200	100
	John Downs	S½ SW NE	..	..	..	..	20	250	125
	Chas. Friend	SE NE	..	..	..	..	40	250	200
	F. R. Smith	NE NE NW	..	..	..	..	10	500	250
	J. L. Rea	E½ NW NE NW	..	..	..	..	5	150	75
	Wm. Fabert	W½ NW NE NW	..	..	..	..	5	50	50
	C. R. Craig	S½ NE NW	..	..	..	..	20	270	135
	J. T. Carlton	SE NW	..	..	..	..	40	400	200
	G. G. Billings	E½ NE NE SW	..	..	..	..	5	300	150
	W. Y. McLaughlin	W½ NE NE SW	..	..	..	..	5	250	125
	J. E. Hendrix	E½ NW NE SW	..	..	..	..	5	250	125
	W. C. Reed	W½ NW NE SW	..	..	..	..	5	200	100
60	L. H. Guinn	S½ NE SW	..	..	..	..	20	500	250
	H. H. Cooper	S½ NW NW SW	..	..	..	..	5	1000	500
	Fred Boisen	S½ N½ NW NW SW	..	..	..	..	2½	100	65
	J. W. Dolphin	N½ N½ NW NW SW	..	..	..	..	2½	130	65
	Henry Stafford	W¼ NE NW SW	..	..	..	..	2½	100	65
	F. E. Kuckuck	E¾ NE NW SW	..	..	..	..	7½	200	125
	A. W. Ayers, Est.	S½ NW SW	..	..	..	..	20	200	100
	Same	SW SW	..	..	..	..	40	400	200
	J. P. Parks	SE SW	..	..	..	..	40	700	350

C. E. Bailey	NE SE	..	..	..	..	40	300	200	
John Downs	W½ SE	..	..	..	..	80	1200	600	
C. E. Bailey	SE SE	..	..	..	..	40	200	125	
Dierks L. & C. Co.	SW NW NW	..	..	..	..	10	150	90	
J. E. Hendrix	NE NW NW	..	..	..	..	10	120	72	
Same	NW NW NW	..	..	..	..	10	400	300	
Reese, D. D.	SE NW NW	..	..	..	..	10	300	210	
Hollis D. S.	E½ NE SW NW	..	..	..	..	5	150	102	
Hildbranch E. I.	W½ NE SW NW	..	..	..	..	5	250	150	
Lake, J. S.	N½ NW SW NW	..	..	..	..	5	200	150	
Spiker, Henry	S½ NW SW NW	..	..	..	..	5	100	60	
Unknown	NE NE	33	8	31	1	40	400	200	
Unknown	All NW NE North of road	..	..	..	..	3	30	15	
D. R. Moore	All NW NE South of Road	..	..	..	..	37	500	250	
Fannie Campbell	SW NE	..	..	..	..	40	200	100	
J. W. Dodge Est.	SE NE	..	..	..	..	40	250	125	
D. R. Moore	NE NW North of Road	..	..	..	..	1.24	20	25	
61 J. W. Campbell	NE NW South of Road	..	..	..	..	32.76	360	180	
Same	NW NW South of Road	..	..	..	..	10	100	50	
W. J. Williamson	NW NW N. of Road	..	..	..	..	30	100	75	
Same	SW NW	..	..	..	..	40	200	100	
J. W. Campbell	SE NW	..	..	..	..	40	750	100	
Mildred Boucher	NE SW	..	..	..	..	40	160	100	
J. T. Williamson Est.	S½ NW SW	..	..	..	..	20	80	50	
J. A. Montgomery	N½ NW SW	..	..	..	..	20	100	55	
Mildred Boucher	SW SW	..	..	..	..	40	200	100	
T. R. Watts	SE SW	..	..	..	..	40	160	100	
T. C. Shepherd	SE SE	..	..	..	..	40	200	100	
T. R. Watt	W½ SE	..	..	..	..	80	240	120	
M. L. Miller	NE SE	..	..	..	..	40	150	350	

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	W. J. Williamson	E½ NE	32	8	31	1	80	600	300
	Wm. Godwin	W½ NE	..	..	..	..	80	800	400
	D. E. Moon	N¼ NE NE	34	8	31	1	10	20	25
	J. C. Thomas	S¾ NE NE	..	..	..	1	30	180	100
	Same	NW NE	..	..	..	..	40	220	110
	Mrs. F. J. Rossback	S½ NE	..	..	..	..	80	300	200
	C. F. Stacks	E½ NW	..	..	..	..	80	300	200
	E. A. Herring	NW NW	..	..	..	..	40	150	100
	C. F. Stacks	SW NW	..	..	..	..	40	160	100
	Wm. Miller	N½ NE SW	..	..	..	..	20	60	50
	D. C. Shepherd	NW SW	..	..	..	..	40	200	100
	Sarah Allison	S½ NE SW	..	..	..	..	20	100	50
	D. C. Shepherd	All SW SW North of Road	..	..	..	..	39	150	100
62	E. J. Blackburn	All SW SW South of Road	24	8	31	1	6	20	15
	Mrs. F. J. Rossback	N½ SE	..	..	..	..	80	250	200
	S. D. Kueger	S½ SE	..	..	..	..	80	200	200
	Sarah Allison	N¼ SE SW	..	..	..	..	10	40	25
	W. M. Trimble	S¾ SE SW	..	..	..	..	30	250	125
	R. F. Jackson	N½ NE	35	8	31	2	80	440	225
	E. K. Edwards	SW NE	..	..	..	..	40	200	100
	R. J. Jackson	SE NE	..	..	..	..	40	120	100
	E. J. Humphrey	E½ NW	..	..	..	..	80	200	200
	J. J. Long	All NW NW North Railroad	..	..	..	..	13	150	52
	F. J. Rossback	All NW NW S. R. R.	..	..	..	..	27	100	108
	Same	N½ SW NW	..	..	..	..	20	50	40
	Frank Mallory	S½ SW NW	..	..	..	..	20	60	40

W. Loobey	N½ SW	..	..	..	1	80	250	220
D. Salters	S½ SW	..	..	..	..	80	300	220
J. H. Todd	N½ SE	..	..	..	..	80	360	240
J. W. Chandler	SW SE	..	..	..	..	40	200	120
B. M. Bounds	SE SE	..	..	..	..	40	200	120
W. H. Austin	NE NE	36	8	31	2	40	200	150
S. A. Young	NW NE	..	..	..	..	40	200	100
T. W. Fowler	S½ NE	..	..	..	..	80	250	200
W. F. Woods	N½ NE NW	..	..	..	..	20	200	100
S. A. Young	E¾ S½ NE NW	..	..	..	..	15	50	40
H. H. Hyatt	NW NW	..	..	..	..	40	250	125
Same	W½ S½ NE NW	..	..	..	..	5	10	10
R. F. Jackson	SW NW	..	..	..	..	40	120	100
W. J. Humphrey	SE NW	..	..	..	..	40	300	150
63 Same	NE SW	..	..	..	..	40	100	100
Same	N½ NW SW	..	..	..	..	20	50	50
E. J. Fuller	S½ NW SW	..	..	..	..	20	100	50
Same	SW SW	..	..	..	..	40	120	100
W. J. Humphrey	SE SW	..	..	..	..	40	100	100
L. L. Zinn	NE SE	36	8	31	2	40	160	100
A. E. Rowery	NW SE	..	..	..	..	40	100	100
W. J. Humphrey	SW SE	..	..	..	..	40	100	100
W. T. Cole	SE SE	..	..	..	..	40	150	100
Edna Heaslet	E½ NE	31	8	30	2	80	400	400
J. J. Benson Est.	W½ NE	..	..	..	..	80	400	400
J. M. Nalley	NE NW	..	..	..	..	40	160	200
Same	N¾ NW NW	..	..	..	..	30	120	150
J. W. Barnes	S¼ NW NW	..	..	..	..	10	150	75
Isabella Park	N½ SW NW	..	..	..	..	20	200	100
J. T. Teal	E¾ S½ SW NW	..	..	..	..	15	150	75

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	John Montgomery	E½ W¼ S½ SW NW	..	..	..	..	2½	250	125
	M. C. Montgomery	W½ W¼ S½ SW NW	..	..	..	..	2½	130	65
	A. C. Nalley	W⅜ SE NW	..	..	..	..	15	60	50
	W. L. Benson	E⅝ SE NW	..	..	..	..	25	90	50
	Anthony Conway	NE SW except 4 acres in NE cor.	..	..	..	..	36	200	100
	A. C. Nalley	4 acres in NE Cor. NE SW	..	..	..	..	4	150	75
	W. C. Cole	NW SW	..	..	..	..	40	900	450
	J. F. Sharrocks	SW SW	..	..	..	..	40	230	125
	Anthony Conway	SE SW	..	..	..	..	40	1000	500
	Edna Heaslet	NE SE	..	..	..	..	40	200	200
64	J. N. Sharrocks	NW SE	..	..	..	..	40	150	100
	H. W. Teasley	SW SE	..	..	..	..	40	200	100
	M. C. Montgomery	SE SE	..	..	..	..	40	500	250
	Good, C. A.	Frl. E½ NE	1	9	31	1	46.85	180	184
	D. L. Montgomery	Frl. W½ NE	..	..	..	1	45.53	200	160
	J. A. Montgomery	Frl. E½ NW	..	..	..	1	40.30	180	160
	B. M. Bounds	Frl. W½ NW	..	..	..	..	42.78	300	240
	T. Williamson	W⅞ NE SW	..	..	..	..	35	150	160
	J. A. Montgomery	E⅛ NE SW	..	..	..	..	5	50	40
	B. M. Bounds	NW SW	..	..	..	..	40	200	160
	J. T. Yates	NE SW SW	..	..	..	..	10	30	40
	P. W. Warrier	Pt. SW SW	1	9	31	1	2	10	16
	Jess Taggart	4 A. sq. in NE Cor. SE SW SW	..	..	..	..	4	40	32
	W. F. Smith	E½ SE SW	..	..	..	..	20	150	120
	Same	S 32 rods W½ SE SW	..	..	..	..	8	80	64

D. L. Williamson	N. 32 rods & S 64 rods of W½ SE SW	..	..	..	..	8	30	40
Yates, J. T.	N. 16 rods of W½ SE SW	..	..	..	..	4	10	16
Dilmer, J. E.	NE SE	..	..	..	..	40	200	160
D. L. Montgomery	NW SE	..	..	..	..	40	200	160
D. F. Williamson	N⅝ SW SE	..	..	..	..	25	100	96
Gaston, G. W.	S⅜ SW SE	..	..	..	..	15	80	64
Brayley	SE SE except 2 A NW corner	..	..	..	..	38	250	200
School	2 A Sq. NW Cor. SE SE	..	..	..	..	2	...	...
Price, J. J.	W½ SW SW	..	..	..	..	20	80	80
Unknown	Pt. SW SW	..	..	..	..	4	40	32
Same	Pt. SW SW	..	..	..	..	10	50	25
65 Baird, B. M.	Frl. E½ NE	2	9	31	1	40.78	200	160
Spence, Jno.	Frl. W½ NE	..	..	..	..	39.92	200	160
Herring, Cordelia	Frl. NW	..	..	..	..	78.76	350	320
Black, Z. V.	E½ SW	..	..	..	..	80	400	320
Herring, Cordelia	NW SW	..	..	..	..	40	120	160
Black, Z. V.	SW SW	..	..	..	..	40	200	160
Spence, Jno.	NE SE	..	..	..	..	40	200	160
Same	W½ SE	..	..	..	..	80	400	320
Warner, P. W.	SE SE	..	..	..	..	40	250	200
Herring, Cordelia	Fr. E½ NE	3	9	31	1	38.16	100	120
W. E. Jennings	Fr. W½ NE	..	..	..	..	38.25	200	120
Christian, Carl	Fr. NW	..	..	..	..	76.63	310	240
Jennings, W. E.	E½ SW	..	..	..	..	80	300	240
Same	NW SW	..	..	..	..	40	80	120
Williamson, J. H.	SW SW	..	..	..	..	40	120	120

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Durham, Oscar	Beg. 29 rods E of SW Cor. NE SE run 56 rods W-N 38 rods SE along Lockesburg & D. Q. road to beg.	3	9	31	1	6½	100	60
Heber, Jno.	All N½ SE except land last above described	..	..	..	..	73½	300	240
Land, J. F.	SW SE	..	..	..	..	40	120	120
Albro, Emma	SE SE	..	..	..	..	40	200	120
Thomas, A. E.	Fr. NE	4	9	31	1	69.74	300	210
Watt, T. R.	Fr. NW	..	..	..	..	55.13	300	180
W. F. Smith	E½ SW	..	..	..	..	80	400	240
Same	W½ SW	..	..	..	..	80	400	240
J. H. Williamson	NE SE	..	..	..	..	40	120	120
66 A. E. Thomas	W½ SE	..	..	..	..	80	300	240
Williamson, J. H.	SE SE	..	..	..	..	40	120	120
J. H. Williamson	NE NE	9	9	31	1	40	100	120
Royal, Ella	NW NE	..	..	..	..	40	200	120
J. J. Henderson	SE NE	..	..	..	..	40	100	120
H. S. Shaw	SW NE	..	..	..	..	40	100	120
J. J. Smith	N½ NW	..	..	..	2	80	250	200
Chas. Gardner	SW NW	..	..	..	..	40	80	100
W. E. Evans	SE NW	..	..	..	..	40	150	100
Same	NE SW	..	..	..	..	40	100	100
Gardner, Chas.	NW SW	..	..	..	..	40	80	100
Cline, A. R.	S½ SW	..	..	..	..	80	200	200
Shaw, H. S.	SE	..	..	..	..	160	400	400

Albro, Emma	E½ NE	10	9	31	1	80	340	240
Land, J. F.	NW NE	..	..	..	..	40	100	120
Harper, T. W.	SW NE	..	..	..	..	40	150	120
Pickett, A. M.	NE NW	..	..	..	..	40	100	120
Williamson, J. H.	NW NW	..	..	..	..	40	100	120
Henderson, J. J.	S½ NW	..	..	..	..	80	200	240
Same	N½ SW	..	..	..	..	80	200	200
O'Connor, D. E.	SW SW	10	9	31	2	40	200	100
C. B. Locke	SE SW	..	..	..	..	40	100	100
Cocke, J. H.	SE	..	..	..	..	160	450	480
Godwin, J. F.	NE NE	11	9	31	1	40	250	200
Same	NW NE	..	..	..	..	40	250	200
Moody, L. A.	SW NE	..	..	..	..	40	300	240
Murphy, J. J.	SE NE	..	..	..	..	40	250	200
67 Black, Z. V.	N½ NW	..	..	..	..	80	400	240
Keener, Mac	SW NW	..	..	..	..	40	200	120
Moody, L. A.	SE NW	..	..	..	..	40	200	120
Keener, Mac	N½ SW	..	..	..	..	80	400	240
Lovell, F. M.	SW SW	..	..	..	..	40	250	190
Dunn, F. D.	SE SW	..	..	..	..	40	100	120
Pratt, F. W	NE SE	..	..	..	..	40	200	160
Moody, L. A.	NW SE	..	..	..	..	40	200	160
Hunter, W. H.	SW SE	..	..	..	..	40	150	160
Cherry, H. T.	SE SE	..	..	..	..	40	200	160
Phillips, E. F. Est.	E½ NE	12	9	31	1	80	300	320
Gaston, G. W. Est.	NW NE	..	..	..	1	40	210	168
Cabe E. W.	SW NE	..	..	..	..	40	200	160
Smith, W. B.	N¾ NE NW	..	..	..	..	30	220	176
Roth, C. H.	S⅝ E½ NW	..	..	..	..	50	400	320
W. F. Smith	NW NW	..	..	..	..	40	240	192

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
S. B. Brown	SW SW	..	..	..	..	40	220	150
.....	Beg. NE Cor. NE SW & run S. 675 ft. N. 480 deg. 30 min. W to N. line of said 40 E 758 ft. to Beg.	..	..	..	..	6	60	48
Buckman, Benj.	All NE SW except above desc. land	..	..	..	..	34	100	80
Same	SE SW	..	..	..	..	40	100	160
Pratt, F. W.	NW SW	..	..	..	..	40	150	160
Howard, I. P.	SW SW	..	..	..	..	40	260	208
Fahnstrom, A.	E½ SE	..	..	..	..	40	300	320
Emerson, J. E. Est.	Beg. NW Cor. N SE thence E. 70 yds. S. 440 yds. W. 70 yds. N. 440 yds. to beg.	12	9	31	1	6	60	48
68 Fahnstrom, A.	NW SE except above desc. land..	..	..	..	..	34	200	160
Buckman, Benj.	All SW SE except 2½ A. owned by M. E. Church	..	..	..	..	37½	200	160
M. E. Church	Beg. 30 rods N SE. cor. SW SE thence W 17 rods N 6 rods W 16 rods N 12 rods E 13 rods S. 8 rods E 20 rds to beg.	..	..	..	..	2½	...	...
J. W. Turnedge	NE NE	13	9	31	1	40	400	320
Buckman, Benj.	NW NE	..	..	..	..	40	100	80
Same	S½ NE	..	..	..	..	80	200	320
Sharrock, J. T.	E½ NW	..	..	..	..	80	200	320
Flournoy, M. J.	NW NW	..	..	..	..	40	100	160

Same	N½ SW NW	..	..	..	..	20	50	80
So. Trust Co.	S½ SW NW except 2 A. in SE Cor.	..	..	..	..	18	100	60
Frank Cornastero	Beg. at SE Cor. of SW NW run W 140 yds., N. 70 yds. E. 140 yds. S. 70 Yds.	..	..	..	..	2	10	6
W. B. Doty	NE SW	..	..	..	..	40	100	160
Same	Beg. NW Cor. SE SW run N & S 70 yds. E & W 200 yds.	..	..	..	..	3	75	60
Dona, D. G.	SW SW	..	..	..	..	40	150	160
Ferguson, A. C.	All SE SW except 3 A. in NW Corner	..	..	..	..	37	200	240
Buckman, Benj.	SE	..	..	..	..	160	350	640
Doty, W. B.	NW SW	..	..	..	..	40	200	160
Thomas, W. F.	NE NE	14	9	31	1	40	200	160
Hunter, W. A.	NW NE	..	..	..	..	40	100	160
69 M. J. Fournoy	5 A. in Sq. NE Cor. of SE SE	..	..	..	..	5	30	24
Taylor, J. W.	All SE NE except 5 A. Sq. in NE Cor.	..	..	..	..	35	200	160
Dunn, F. D.	NE NW	..	..	..	..	40	100	120
Same	W½ NW	..	..	..	..	80	200	200
McCroskey, M. R.	SE NW	..	..	..	..	40	100	100
Same	NE SW	..	..	..	..	40	100	100
Hoover, Edgar	W½ SW	14	9	31	2	80	420	210
Same	SE SW	..	..	..	..	40	160	100
S. B. Brown	N½ SE	..	..	..	..	80	400	280
L. R. Richardson	SW SE	..	..	..	..	40	200	140
Same	SE SE	..	..	..	..	40	300	210
J. C. Swan	SW NE	..	..	..	1	40	..	240
McCoy, J. L.	NE	15	9	31	2	160	400	400

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Locke, C. B.	E½ NW	..	..	..	..	80	250	200
	Croswell, C. R.	S½ SW	..	..	..	..	80	400	200
	Locke, C. B.	NE SW	..	..	..	..	40	120	100
	Rood, R. J.	NE SE	..	..	..	..	40	100	100
	Wallace, M. E.	W½ SE	..	..	..	..	80	200	200
	Bands, B. M.	SE SE	..	..	..	..	40	200	100
	W. H. Johnson	W½ NW	..	..	..	..	80	400	200
	Same	NW SW	..	..	..	..	40	250	125
	Lovell, W. M.	NE NE	16	9	31	2	40	250	125
	Lambeth, R. P.	NW NE	..	..	..	..	40	220	110
	Scott, J. W.	NE NE SE	..	..	..	..	10	100	50
	Lambeth, W. R.	NE NW	..	..	..	..	40	100	100
	Williams R. A.	All NW NW except S½ SW NW NW	..	..	..	..	35	100	85
70	Lambeth, W. R.	NE NE SW	..	..	..	3	10	50	20
	Lambeth, R. P.	SE NE SW	..	..	..	..	10	50	20
	Same	SE SW	..	..	..	..	40	200	80
	Same	S½ SE NW	..	..	..	2	20	100	50
	Same	S½ SW NE	..	..	..	..	20	100	50
	Same	N 3/5 E¼ SE NE and N 1/5 W½ SE NE and S¼ N 2/5 E½ W½ SE NE	..	..	..	..	9	50	25
	Pride, G. C.	NW NW SW	..	..	..	3	10	50	20
	Lambeth, R. P.	SW NE SW	..	..	..	..	10	60	24
	Pride, G. B.	N½ NW SW SW	..	..	..	..	5	30	20
	Same	NW NW SE	..	..	..	2	10	50	25
	Same	SE SW SE	..	..	..	..	10	80	40

Tribble, T. S.	N½ SE SE SE	..	..	..	..	5	80	40
Same	S½ NW SW SW	..	..	..	3	5	30	20
T. S. Tribble	NE SW SW	16	9	31	3	10	50	20
Same	N 1/5 E½ NE SE NW	..	..	..	2	10	10	5
Pride, G. B.	N 1/5 W½ E½ SE NE	..	..	..	..	2	20	10
Same	S 3/5 N½ W½ E½ SE NE	..	..	..	..	3	30	15
Same	S 2/5 S½ W½ E½ SE NE	..	..	..	..	2	20	10
Same	N 2/3 S 3/5 E½ W½ SE NE	..	..	..	..	4	40	20
Same	S 1/5 N½ W¼ SE NE	..	..	..	..	1	10	5
Same	N 2/3 S 3/10 W¼ SE NE	..	..	..	..	2	20	10
Same	N 1/3 S 3/10 W½ E½ SE NE	..	..	..	..	2	10	10
Same	NW NE SE	..	..	..	..	10	50	25
Wagoner, Jeff	SW SE SE	..	..	..	..	10	50	25
Pride, G. B.	S 1/5 E½ W½ SE NE	..	..	..	..	2	20	10
71 Burg, M. A.	S 1/3 N 3/10 E½ W½ SE NE	..	..	..	..	1	10	5
Daughaday, Ralph	N½ S 2/5 E¼ SE NE	..	..	..	..	2	20	10
Daughaday, F.	N 3/10 W¼ SE NE	..	..	..	..	3	30	15
Pride, G. B.	S 1/5 E½ SE NE	..	..	..	..	4	20	10
Gordan, A.	S¼ N 2/5 W¼ SE NE	..	..	..	..	1	10	5
White, J. H.	N 2/5 S½ W¼ SE NE	..	..	..	..	2	20	10
Freeman, J. L.	S½ SW NW NW	..	..	..	..	5	50	25
Williams, R. A.	SW NW	..	..	..	..	40	400	200
Tribble, T. S.	S½ N 2/5 E½ NE SE NW	..	..	..	..	1	10	5
Enoch, J. B.	S 3/5 E½ NE SE NW	..	..	..	..	3	30	15
Pride, G. B.	NW SE NW	..	..	..	..	10	50	25
Tribble, T. S.	S 3/5 W½ NE SE NW	..	..	..	..	3	30	15
Same	S½ N 2/5 W½ NE SE NW	..	..	..	..	1	10	5
Unknown	S 1/10 W¼ SE NE	..	..	..	..	1	10	5
Unknown	N 1/10 W½ E½ SE NW	..	..	..	..	1	10	5
Pride, G. B.	N½ NW NE SW	..	..	..	3	5	50	20

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Same	S½ NW NE SW	..	..	..	..	5	50	20
	Fox, Mrs. J. B.	SW NW SW	..	..	..	..	10	100	40
	Trinson, H. G.	NE NW SW	..	..	..	..	10	100	40
	Unknown	SE NW SW	..	..	..	..	10	..	40
	Pride, G. B.	SE SW SW	..	..	..	..	10	50	40
	Mushenheiner, J. F.	SW SW SW	..	..	..	..	10	100	40
	Carmonds, L. S.	N½ SE NE SE	..	..	..	..	5	50	25
	Holmes, C. G.	S½ SE NE SE	..	..	..	..	5	50	25
	Tribble, T. S.	SW NE SE	..	..	..	..	10	100	50
	Evans, R. A.	S½ NE NW SE	16	9	31	2	5	50	25
72	Tribble, C. A.	N½ NE NW SE	..	..	..	..	5	50	25
	Tribble, T. S.	SW NW SE	..	..	..	..	10	100	50
	Pride, G. B.	SE NW SE	..	..	..	..	10	100	50
	Stonow, H. D.	SW SW SE	..	..	..	..	10	100	50
	Henry Wood	S½ NE SW SE	..	..	..	..	5	50	25
	J. C. Lyman	N½ NE SW SE	..	..	..	..	5	50	25
	Martin, S. E.	N½ NW SW SE	..	..	..	..	5	50	25
	Jamison, A. M.	S½ NW SW SE	..	..	..	..	5	50	25
	Pride, G. B.	NW SE SE	..	..	..	..	10	100	50
	T. S. Tribble	S½ SE SE SE	..	..	..	..	5	50	25
	London, O. M.	NE SE SE	..	..	..	..	10	100	50
	Millsap, H.	NE SW NE	..	..	..	..	10	100	50
	Lambert, R. P.	NW SW NE	..	..	..	..	10	100	50
	Harrison, R. C.	NE NE	22	9	31	..	40	240	120
	Wallace, Mrs. M. E.	NW NE	..	..	..	..	40	200	100
	Stubbs, R. W.	SW NE	..	..	..	..	40	200	100

Harrison, R. C.	SE NE	..	..	..	2	40	280	140
Kline, A. R.	NW NW	..	..	..	3	40	200	80
Jones, W. S.	NE NW	..	..	..	..	40	200	80
Thomas, W. F.	SW NW	..	..	..	..	40	200	80
Kline, A. R.	SE NW	..	..	..	..	40	200	80
Lovell, W. S.	N½ SW	..	..	..	..	80	530	212
Wilson, T. F.	SW SW	..	..	..	..	40	200	80
Lovell, W. S.	SE SW	..	..	..	..	40	240	112
Durham, Oscar	N½ SE	..	..	..	..	80	530	320
Gill, A. J.	S½ SE	..	..	..	..	80	400	320
Richardson, L. E.	N½ NE	23	9	31	2	80	400	200
73 Martin, S. F.	S½ NE	..	..	..	..	80	580	295
Taylor, L. F.	NW	..	..	..	..	160	850	425
Parks, J. A.	E½ NE SW	..	..	..	..	20	160	80
Reed, J. S.	W½ NE SW	..	..	..	..	20	120	60
Ward, J. F.	NW SW	..	..	..	..	40	240	120
Myers, Sarah	SW SW	..	..	..	..	40	160	100
Reed, J. L.	SE SW	..	..	..	..	40	340	160
Doty, J. D. Est.	NE SE	23	9	31	2	40	200	100
Paris, J. A.	NE SE	..	..	..	2	40	200	100
Doty, S. J.	S½ SE	..	..	..	..	80	340	200
Orr, J. S.	E½ NW NE	24	9	31	2	20	100	80
Hansbrough, G. W.	E½ NE	..	..	..	..	80	500	400
Orr, J. S.	SW NE	..	..	..	..	40	300	240
Martin, G. W.	NW NW	..	..	..	..	40	200	140
Kinsworthy, L. F.	NE NW	..	..	..	..	40	350	245
Martin, S. F.	SW NW	..	..	..	..	40	100	140
Watson, W. H.	SE NW	..	..	..	..	40	290	200
Gore, Chas.	NE SW	..	..	..	..	40	200	140
Doty, J. D.	W½ SW	..	..	..	..	80	320	280

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Thalmon, J. A.	SE SW	..	..	..	..	40	240	168
Poole, D. L.	SE SE	..	..	..	..	40	200	140
Gore, Chas.	NW SE	..	..	..	..	40	200	140
Thalmon, J. A.	SW SE	..	..	..	..	40	330	235
Gore, Charles	W½ NE SE	..	..	..	..	20	50	70
Green, W. L.	E½ NE SE	..	..	..	..	20	100	70
Watson, W. H.	W½ NW NE	..	..	..	..	20	120	96
Wilson, F.	N½ NE	25	9	31	2	80	660	240
74 James, B. F. Est.	SW NE	..	..	..	..	40	200	100
Jones, J. W.	SE NE	..	..	..	..	40	250	100
Thalmon, J. A.	W½ NE NW	..	..	..	..	20	100	60
James, B. F. Est.	S½ NE NW	..	..	..	..	20	100	60
Same	NW NW	..	..	..	..	40	200	100
Leslie, Frank	SW NW	..	..	..	..	40	200	100
James, B. F. Est.	SE NW	..	..	..	..	40	300	110
Burk, W. W.	E½ SW	..	..	..	..	80	700	220
Reedy, H. W.	NW SW	..	..	..	..	40	280	100
Neal, A. S.	SW SW	..	..	..	..	40	250	110
Jones, J. W.	NE SE	..	..	..	..	40	300	110
Tatum	W½ SE	..	..	..	..	80	400	280
Nelson, W. S. Est.	SE SE	..	..	..	..	40	250	100
Burkhead, F. L.	NE NE	26	9	31	2	40	200	100
Same	W½ NE	..	..	..	..	80	420	200
Same	SE NE	..	..	..	..	40	200	100
J. B. Gore	NE SE	..	..	..	..	40	600	200
Neal, A. S.	NW SE	..	..	..	..	40	600	200
Same	SE SE	..	..	..	..	40	300	100

	Same	SW SE	..	..	..	..	40	250	100
	J. G. Fielder	Fr. N½ N½	2	9	30	3	117.60	500	210
	Frank Terhune	SW NE	..	..	..	..	40	100	80
	Same	SE NE	..	..	..	..	40	100	80
	J. G. Fielder	SE NW	..	..	..	..	40	200	80
265	Dierks L. & C. Co.	NE SW	..	..	..	..	40	120	80
	A. M. Pickett	NW SW	..	..	..	..	40	150	120
	R. M. Cox	S½ SW	..	..	..	..	80	300	160
	75 Dierks L. & C. Co.	N½ SE	..	..	..	..	80	200	160
	S. L. Williamson	SW SE	..	..	..	..	40	130	120
	J. R. Cook	SE SE	..	..	..	..	40	100	80
	A. M. Pickett	SW NW	..	..	..	..	40	150	120
	W. E. Clark	Fr. N½ NE	3	9	30	..	52.56	250	90
	Same	Fr. SW NE	..	..	..	..	40.64	120	60
	Same	Fr. NW	..	..	..	..	126.82	500	225
	C. M. Johnson	S½ N½ SW	..	..	..	..	40	200	90
	Same	S½ SW	..	..	..	..	80	640	195
	Same	NE SE	..	..	..	..	40	120	45
	Same	W½ SE	..	..	..	..	53.50	260	90
	T. W. Park	N. 26½ A. NW SE	..	..	..	..	26½	260	60
	M. Fisk	SE SE	..	..	..	..	40	120	45
	J. Nally	N½ N½ SW	..	..	..	..	40	120	25
	J. A. Lowery	Fr. SE NE	..	..	..	..	39.64	150	60
	W. E. Clark	Fr. NE E of Creek	4	9	30	3	113.94	400	150
	W. C. Park	Frl. SW NE	..	..	..	..	62½	460	150
	Park, Dr. C. E.	Frl. N½ NW	..	..	..	..	62½	400	175
	W. C. Park	Frl. S½ NW	..	..	..	..	80.60	800	250
	W. C. Park	NE SW	4	9	30	3	40	400	150
	Same	W½ SW	..	..	..	..	80	400	250
	J. R. Hopson	SE SW	..	..	..	..	40	400	100

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	T. W. Park	E½ SE	..	..	..	..	80	900	300
	W. C. Park	NW SE	..	..	..	..	40	400	150
	N. S. Shinn	SW NE	..	..	..	..	40	400	200
	W. C. Park	Fr. E½ NE W of Cosatot River	5	9	30	2	58.30	500	200
	McCarty & Lion	Fr. SW¼ NE W of Cosatot R.	..	..	..	..	46¾	400	200
76	W. C. Park	Frl. W¼ NE E of Cossatot River	..	..	..	..	2.95	20	10
	McCarty & Liner	Frl. NW	..	..	..	..	113¾	700	400
	J. T. Yates	Frl. E½ SW	..	..	..	..	74	350	200
	J. Montgomery	Frl. NW NE E of C. R.	..	..	..	..	8	80	40
	J. F. Teal	Fr. NE NW E of C. R.	..	..	..	..	6	100	50
	E. Hendrix	SW SW	..	..	..	..	40	250	150
	J. F. Sharrock	NW SW	..	..	..	..	40	300	150
	W. C. Park	NE SE	..	..	..	..	40	300	120
	J. F. Teal	NW SE	..	..	..	..	40	380	175
	W. A. Little	S½ SE	..	..	..	..	80	800	400
	M. C. Montgomery	Fr. E½ NE	6	9	30	..	55.95	300	280
	D. C. Richmond	Fr. W½ NE	..	..	..	..	50.87	250	210
	Dierks L. & C. Co.	Fr. E½ NW	..	..	..	..	53.18	150	210
	Clara A. Good	Fr. W½ NW	..	..	..	..	53	300	210
	E. D. Marlow	NE SW	..	..	..	..	40	200	140
	J. E. Dunor	Fr. W½ SW	..	..	..	..	80.84	400	280
	J. J. Price	SE SW	..	..	..	..	40	200	140
	W. F. Wood	N½ SE	..	..	..	..	80	700	560
	F. V. Halter	S½ SE	..	..	..	..	80	400	420
	J. R. Richardson	N½ NE	7	9	30	1	80	400	400
	J. A. Montgomery	SW NE	..	..	..	..	40	250	240

C. Holcomb	SE NE	..	..	..	..	40	160	240
D. N. McClure	Fr. E½ NW	..	..	..	..	80.71	600	640
D. N. McClure	SW NW	7	9	31	1	40	240	200
V. P. Thompson	NW NW	..	..	..	..	40	300	320
J. R. Richardson	Fr. NW SW	..	..	..	..	41.6	250	240
77 W. A. Hendrix	NE SW	..	..	..	..	40	280	300
B. C. Benson	Fr. SW SW	..	..	..	..	41.31	220	240
W. A. Hendrix	SE SW	..	..	..	..	40	330	200
A. M. Pickett	NE SE	..	..	..	..	40	100	160
Chas. Hendrix	NW SE	..	..	..	..	40	200	160
G. W. Flournoy	SW SE	..	..	..	..	40	200	160
C. W. Spence	E½ SE SE	..	..	..	..	20	140	160
Peter Swan	W½ SE SE	..	..	..	..	20	100	120
W. B. Little	NE NE	8	9	30	2	40	400	200
Lillie M. Leeper	W½ NE	..	..	..	..	80	800	400
John Wilkerson	SE NE	..	..	..	..	40	400	200
C. R. McCrockan	NE NW	..	..	..	..	40	200	150
Isbell Park	W½ NW	..	..	..	..	80	500	400
X. R. Banks	N¾ SE NW	..	..	..	..	30	300	150
L. M. Leeper	S¼ SE NW	..	..	..	..	10	80	50
X. R. Banks	NE SW	..	..	..	1	40	400	240
T. J. Jones	NW SW	..	..	..	..	40	300	240
M. M. Peters, Est.	W½ SW SW	..	..	..	..	10	100	60
W. E. Montgomery	E¾ SW SW	..	..	..	..	30	300	180
Peter Swan	SE SW	..	..	..	..	40	300	240
John Wilsenson	E½ NE SE	..	..	..	2	20	200	100
D. F. Williamson	W½ NE SE	..	..	..	..	20	240	120
G. C. Smallwood	E¾ NW SE	..	..	..	..	30	200	150
X. R. Banks	W¼ NW SE	..	..	..	..	10	100	50
J. M. Hunsucker	SW SE	..	..	..	..	40	400	200

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
John	Winkeham	E½ SE SE	..	..	..	..	20	300	150
	Hunsucker & J. T. Jones	W½ SE SE	..	..	..	..	20	110	100
78	H. R. & W. E. Johnson	E½ NE	9	9	30	..	80	800	400
	J. R. Hopson	W½ NE	..	..	..	..	80	650	260
Same		NW	..	..	..	..	160	1300	520
N. P.	Hopson	NE SW	..	..	..	..	40	400	200
John	Winkerman	NW SW	9	9	20	2	40	400	200
B. F.	Wallace	S½ SW	..	..	..	..	80	800	400
J. R.	Hopson	N½ NE SE	..	..	..	..	20	140	80
L. M.	Leeper	S½ NE SE	..	..	..	..	20	200	100
N. P.	Hopson	NW SE	..	..	..	..	40	400	200
C. L.	Shinn	SW SE	..	..	..	..	40	400	200
L. M.	Leeper	SE SE	..	..	..	..	40	400	200
J. M.	Hall	NE NE	10	9	30	3	40	250	120
Same		E½ NW NE	..	..	..	..	20	50	40
W. E.	Clark	W½ NW NW NE	..	..	..	..	5	300	120
J. B.	Lowery	SW NW NE	..	..	..	..	10	100	40
Same		E½ NW NW NE	..	..	..	..	5	80	32
J. R.	Hopson	SW NE	..	..	..	..	40	300	90
W. R.	Cox	SE NE	..	..	..	..	40	120	80
G. B.	Lowery	N½ NW	..	..	..	..	80	400	160
S. E.	Cox	S½ NW	..	..	..	..	80	390	160
W. A.	Little	S½ NE SW	..	..	..	2	20	80	50
W. B.	Little	N½ NE SW	..	..	..	..	20	80	50
J. R.	Hopson	N¾ W½ SW	..	..	..	..	60	300	120
L. M.	Leeper	S½ SW SW	..	..	..	..	20	100	50

W. B. Little	3 ac. NE Cor. of SW SE	..	..	..	..	3	110	75
Same	NE SE	..	..	..	..	40	200	100
79 W. A. Little	W½ S½ NW SE	..	..	..	..	10	50	25
J. A. Lowry	E½ S½ NW SE	..	..	..	..	10	50	25
Same	N½ NW SE	..	..	..	..	20	120	60
W. A. Little	Bg. in NW Cor. of SE SE and run S 440 yds. E 568 links N 949½ links E 500 links South 15 1/3 degrees E. 984 links E. 667 l., N. 440 yds. W. 440 yds. to pt. of beginning	..	..	..	..	34	300	200
N. S. Shinn	Bg. at pt. 667 lk. W. of SE cor. of Sec. 10 run W. 765 lks. N 949½ lks. E. 500 lks. S 15 1/3 Deg. E. 984 lks. to pt. of beginning except 3 A	..	..	..	..	6	150	175
J. M. Nalley	SW SE in NE	..	..	..	..	37	190	100
Willis Jones	NE NE	11	9	30	3	40	100	80
A. H. Taggart	NW NE	11	9	30	3	40	100	40
J. M. Hunsucker	SW NE	..	..	..	..	40	120	80
J. C. Corley	SE NE	..	..	..	..	40	150	80
A. H. Taggart	N½ NW	..	..	..	..	80	200	120
J. M. Hunsucker	S½ NW	..	..	..	..	80	240	140
S. M. Hannell	N½ SW	..	..	..	2	80	200	150
Emma T. Benson	SE SW	..	..	..	..	40	100	75
F. M. Ridley	W 1/5 SW SW	..	..	..	..	8	100	50
M. B. Hannell	E 4/5 SW SW	..	..	..	..	32	150	150
A. L. Shinn	NE SE	..	..	..	..	40	100	100
W. A. Hale	W½ SE	..	..	..	..	80	400	200
J. E. Story	SE SE	..	..	..	..	40	100	100

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
80	J. M. Hunsucker	Fr. NE NE	12	9	30	3	43.82	150	80
	M. J. Chenneyworth	W½ NE	..	..	..	..	80	200	100
	Pearl Stout	SE NE	..	..	..	..	40	150	120
	Norwood & Cooper	E½ NW	..	..	..	..	80	240	96
	Willis Jones	NW NW	..	..	..	..	40	120	60
	J. C. Corley	SW NW	..	..	..	..	40	200	100
	Norwood & Cooper	NE SW	..	..	..	2	40	120	75
	Ed Downings	W½ SW	..	..	..	..	80	300	200
	J. E. Keck	SE SW	..	..	..	..	40	120	75
	Pearl Stout	NE SE	..	..	..	..	40	100	75
	Norwood & Cooper	NW SE	..	..	..	..	40	260	130
	Same	N½ E¾ SW SE	..	..	..	..	15	60	30
	County Farm	S½ E¾ SW SE	..	..	..	..	15	..	..
	J. E. Keck	W¼ SW SE	..	..	..	..	10	30	25
	Pearl Stout	N½ SE SE	..	..	..	..	20	60	50
	County Farm	S½ SE SE	..	..	..	..	20	..	..
	F. J. Burnsworth	NE NE	13	9	30	..	40	200	150
	Same	E¾ NE NE	..	..	..	..	30	100	100
	Rosa Tate	W¼ NW NE	..	..	..	..	10	70	35
	Dick Jacks' Est	SW NE	..	..	..	..	40	120	75
	Same	SE NE	..	..	..	..	40	120	75
	Rosa Tate	E½ NE NW	..	..	..	..	10	50	25
	J. E. Keck	W¾ NE NW	13	9	30	2	30	100	75
	J. E. Stacy	NW NW	..	..	..	..	40	100	75
	M. P. Crossett	SW NW	..	..	..	..	40	100	75
	C. Ross	SE NW	..	..	..	..	40	250	150

	M. McMann	W½ NE SW	..	..	..	1	20	100	60	
81	Riche Jacques	E½ NE SW	..	..	..	..	20	190	120	
	M. P. Crossett	N½ E½ NW SW	..	..	..	..	10	200	120	
	J. F. Cannon	W½ NW SW	..	..	..	..	20	100	60	
	Same	E½ SW SW	..	..	..	..	20	70	60	
	M. J. McWhorter	N⅝ SE SW	..	..	..	..	25	50	125	
	Dona Cannon	N⅛ S⅜ SE SW	..	..	..	..	5	30	18	
	Grover Cannon	S¼ SE SW	..	..	..	..	10	100	60	
	Dick Jacks Est	NW SE	..	..	..	2	40	300	150	
	Dona Cannon	E⅛ SW SE	..	..	..	..	5	50	25	
	R. A. Cannon	W⅞ SW SE	..	..	..	..	35	200	100	
	Stout, C. M.	SE SE	..	..	..	..	40	150	100	
	Fred Cannon	S½ E½ NW SW	..	..	..	..	10	50	120	
	Claude Reeder	W½ SW SW	..	..	..	..	20	200	150	
	Isom Bell	NE SE	..	..	..	..	40	150	120	
	J. E. Stacy	NE SE	14	9	30	2	40	100	100	
	Same	E½ NW NE	..	..	..	..	20	120	60	
	Ferguson, A. T	W½ NW NE	..	..	..	..	20	100	50	
	Same	W½ SW NE	..	..	..	..	20	200	100	
	Quarles, J. W	E½ SW NE	..	..	..	..	20	100	50	
	Nesbett, W. T	E½ SE NE	..	..	..	..	20	110	75	
	Ferguson, A. T	W½ SE NE	..	..	..	..	20	140	75	
	Same	E⅜ NE NW	..	..	..	..	15	80	50	
	Same	E⅜ SE NW	..	..	..	..	15	80	50	
	L. M. Leeper	W⅝ NE NW	..	..	..	..	25	75	50	
	B. F. Wallace	W⅝ SE NW	..	..	..	..	25	75	50	
	Same	NW NW	..	..	..	..	40	150	100	
	Same	SW NW	..	..	..	..	40	150	100	
82	Herring, E. J	NE SW	..	..	..	1	40	300	180	
	Grady, G. F	E⅞ SE SW	..	..	..	1	35	350	210	

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Graveyard	W⅛ SE SW	..	..	..	..	5	...	...
Hargrove, J. R.	NW SW	14	9	30	1	40	500	300
Sutton, A. A	SW SW	..	..	..	..	40	200	240
Cannon, J. F	E 7/16 NE SE	..	..	..	..	17½	300	180
Quarles, J. W	N 2/9 W 9/16 NE SE	..	..	..	..	5	250	150
Gilliam, R. A	S 7/9 W 9/16 NE SE	..	..	..	..	17½	200	120
J. M. Hunsucker	E½ NW SE	..	..	..	..	20	300	180
E. J. Herring	W½ NW SW	..	..	..	..	20	200	120
Harrison, J. F	N 1/5 W½ SW SE	..	..	..	..	4	200	180
Grady, G. F	S 3/5 N 4/5 W½ SW SE	..	..	..	..	12	400	240
Henry, J. T	S 1/5 W½ SW SE	..	..	..	..	4	200	150
J. M. Hunsucker	N 1/10 E½ SW SE	..	..	..	..	2	20	12
Richardson, W. L	S 5/6 N 6/10 E½ SW SE	..	..	..	..	10	300	180
Cooper, L. E	N½ S 2/5 E½ SW SE	..	..	..	..	4	350	210
Henry, J. T	S 1/5 E½ SW SE	..	..	..	..	4	100	180
Cannon, Dona	S¼ SE NE	..	..	..	..	10	50	50
Gilliam, R. A	N¾ SE NE	..	..	..	..	30	300	150
Wilder, Nora	SW SE	15	9	30	1	40	200	240
A. H. Rowell	Beg. 720 N of SW cor. SE SE run E & W 210 ft. N & S 394 ft. to pt. of beg	..	..	..	..	2.34	250	300
J. J. Bradley	W. 180 ft. of S. 220 ft. SE SE	..	..	..	..	3	200	180
King, P. L	E. 1140 ft. S½ SE SE	..	..	..	..	17	200	240
83 King, T. J	Beg. NE cor. SE SE run S. 660 ft. W. 1140 ft. N. 339 ft. E. 336 ft. N. 321 ft. E. 804 ft. to Beg.	..	..	..	..	13.15	40	78

hinn, J. W.	Beg. at NW cor. of S½ SE SE run S. 320 ft. E. 546 ft. N. 321 ft. W. 546 ft. to pt. of beg.	..	..	..	..	4	400	240
Shinn, N. S.	NE NE NE	..	..	..	2	10	50	50
Johnson, W. E.	NW NE NE	..	..	..	..	10	100	100
Same	S½ NE NE	..	..	..	..	20	300	150
Hopson, N. T.	N 924 ft. of E. 776 ft. NW NE	..	..	..	..	15.34	500	250
L. M. Leeper	NW NE except 924 ft. of E. 776.5 ft.	..	..	..	..	24.66	460	400
Same	N½ SW NE	..	..	..	..	20	90	100
Same	W 1/5 S½ SW NE	..	..	..	..	4	30	15
D. M. Terhune	E 4/5 S½ SW NE	..	..	..	..	16	210	150
L. M. Leeper	N¾ E½ SE NE	..	..	..	..	15	100	75
J. W. Shinn	S¼ E½ SE NE	..	..	..	..	5	40	25
L. M. Leeper	N¼ W½ SE NE	15	9	30	2	5	50	25
B. F. Wallace	S 2/3 N¾ W½ SE NE	..	..	..	..	10	100	50
J. G. Johnson	S¼ W½ SE NE	..	..	..	..	5	50	100
Leeper, L. M.	N½ NW	..	..	..	..	80	350	300
Same	SW NW	..	..	..	..	40	200	100
Same	N½ SE NW	..	..	..	..	20	240	100
Same	W¼ S½ SE NW	..	..	..	..	5	40	25
J. A. Bandy	E¾ S½ SE NW	..	..	..	..	15	50	50
Same	E¾ NE SW	..	..	..	1	30	100	180
L. M. Leeper	W¼ NE SW	..	..	..	..	10	50	60
84 L. M. Leeper	E¾ NW SW	..	..	..	..	30	80	120
Wardlaw, P. A.	W¼ NW SW	..	..	..	..	10	70	60
Same	All SW SW N. of D. & E. Rd	..	..	..	..	28	180	150
So. Land & T. Co.	All SW SW S. of D. & E. Rd	..	..	..	..	10	50	60
D. & E. Right of W.	In SW SW	..	..	..	..	2	20	12
Bandy, J. A.	NE SE SW	..	..	..	..	10	50	30

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
King, P. L.	NW SE SW	..	..	..	..	10	100	120
Same	W 1/3 S½ SE SW	..	..	..	..	62.3	50	60
Slaton, J. R.	E 2/3 S½ SE SW	..	..	..	..	13.34	200	180
Shinn, J. B.	N¼ NE SE	..	..	..	..	10	150	180
Same	W 8 Ch. S½ N½ NE SE	..	..	..	..	4	50	30
Wallace, B. F.	E 12 Ch. S½ N½ NE SE	..	..	..	..	6	300	360
E. E. Dickard	W. 546 of N. 279 ft. of S½ NE SE	..	..	..	..	3½	150	150
B. F. Wallace	E. 486 ft. of N. 420 ft. S½ NE SE	..	..	..	..	5.61	200	120
Same	W. 288 ft. E. 774 ft. S½ NE SE	..	..	..	..	4	100	60
King, T. J.	S 1/3 E. 486 ft. S½ NE SE	..	..	..	..	6	30	36
Abbott, W. T.	Beg. 279 ft. S. of NW. Cor. of S½ NE SE W. 210 ft. N. 587 ft. to pt. of beg	..	..	..	..	5.40	200	210
Shinn, J. B.	NE NW SE	..	..	..	..	10	150	90
L. M. Leeper	NW SW SE	..	..	..	..	10	100	60
J. A. Bandy	S½ NW SE	..	..	..	..	20	150	120
L. M. Leeper	NE NE	16	9	30	2	40	200	200
Benson, Emma T.	NW NE	..	..	..	..	40	400	200
85 Holcomb, J. C.	S½ NE	..	..	..	..	80	600	400
R. A. Gilliam	NE NW	..	..	..	..	40	400	200
Custer Little	NW NW	..	..	..	..	40	300	200
Shinn, J. W.	E½ SW NW	..	..	..	..	20	150	150
Rowell, A. H.	W. ½ SW NW	..	..	..	..	20	150	150
V. J. Edwards	SE NW	..	..	..	..	40	300	200

Cannon, Dona	S 4/5 SE SW	..	..	..	1	32	300	240
King, L. F.	N 1/5 SE SW	..	..	..	..	8	80	60
Same	S⅜ NE SW	..	..	..	..	15	200	120
King, T. L.	N⅝ NE SW	..	..	..	..	25	250	150
King, T. J.	NW SW	..	..	..	..	40	300	240
D. A. Hutchinson	SW SW	..	..	..	..	40	300	240
P. A. Wardlaw	SE	..	..	..	..	160	800	960
T. J. Jones	All NE NE W. of River N. of Slough	17	9	30	..	34.5	200	180
Honnell, M. B.	All NE NE E. of Cosatot River	..	..	..	..	3	30	18
J. M. Hunsucker	All NE NE W. of C. R. S. of Slough	..	..	..	..	2½	20	12
Cannon, J. F.	NW NE	..	..	..	..	40	400	240
T. W. McCown, Est.	SW NE	..	..	..	..	40	200	240
W. L. Johnson	SE NE	..	..	..	..	40	400	240
J. M. Hunsucker	NW NE	..	..	..	..	40	400	240
A. C. Ferguson	NW NW	..	..	..	..	40	500	300
McCown, T. W. Est.	SW NW	..	..	..	..	40	240	240
Same	SE NW	..	..	..	..	40	400	240
Same	S½ SW	..	..	..	..	80	400	480
Same	NW SW	..	..	..	..	40	300	240
86 McCown, T. W. Est.	SW SW	..	..	..	..	40	320	240
Same	N½ SE	..	..	..	..	80	400	480
Hutchinson, D. A.	S½ SE	..	..	..	..	80	700	600
Ferguson, A. C.	NE NE	18	9	30	1	40	500	400
J. W. Turnedge	NW NE	..	..	..	..	40	300	320
Flournoy, M. J.	SW NE	..	..	..	..	40	200	260
McCown, R. W. Est.	SE NE	..	..	..	..	40	200	320
J. W. Turnedge	Fr. N½ NW	..	..	..	..	80¾	500	640
Buckman, Benj.	Fr. SW NW	..	..	..	..	40.86	150	320

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	W. N. Flournoy, Est.	SE NW	..	..	..	..	40	150	240
	Same	NE SW	..	..	..	..	40	150	240
	Buckman, Benj.	Fr. NW SW	..	..	..	..	41.10	150	240
	J. C. Flournoy	Fr. SW SW	..	..	..	..	40.98	300	320
	Flournoy, M. J.	SE SW	..	..	..	..	40	200	225
	T. W. McCown, Est.	NE SE	..	..	..	..	40	200	320
	M. J. Flournoy	NW SE	..	..	..	..	40	100	240
	L. C. McCown	S½ SE	..	..	..	..	80	500	640
	L. C. McCown	N½ NE.	19	9	30	..	80	500	640
	D. J. Dona	S½ NE	..	..	..	..	80	400	640
	J. G. Biddlecome	Fr. N½ NW	..	..	..	..	80.59	400	640
	Millard, E. B.	Fr. S½ NW	..	..	..	..	80.69	310	640
	Millard, E. B.	N½ SW	..	..	..	..	80	200	280
	Poole, D. L.	S½ SW	..	..	..	..	80	400	420
	D. J. Dona	NE SE	..	..	..	..	40	200	210
	Millard E. B.	NW SE	..	..	..	..	40	150	140
	W. L. Green	E½ SW SE	..	..	..	..	20	80	70
87	Poole, D. L.	W½ SW SE	..	..	..	..	20	100	70
	W. W. Burk	E. of Slough All SE SE	..	..	..	..	23	360	280
	W. L. Green	All SE SE W. of Slough	..	..	..	..	17	50	105
	Lyon, T. M.	E½ NE	20	9	30	..	80	800	480
	Cannon, Dona	NW NE	..	..	..	..	40	400	240
	Lyon, T. M.	SW NE	..	..	..	..	40	200	120
	McCown, T. W. Est.	W. 62 A. E½ NW	..	..	..	..	62	500	360
	Same	N. 28 A. NW NW	..	..	..	..	28	150	150
	Cannon, Dona	N 1/6 E. 18 A. E½ NW	..	..	..	..	3	30	18

Lyon, T. M.	S 5/6 E. 18 A. E½ NW	..	..	..	..	15	150	72
Dona, D. J.	S. 12 A. NW NW	20	9	30	1	12	120	72
Same	E⅞ SW NW	..	..	..	..	35	200	210
Wilson, W. H.	W⅛ SW NW	..	..	..	..	5	40	30
Same	E½ SW	..	..	..	..	80	800	480
Henry Day, Est.	W½ W½ SW	..	..	..	..	40	100	180
Burk, W. W.	W¾ E½ W½ SW	..	..	..	..	30	350	240
Watson, W. H.	E¼ E½ W½ SW	..	..	..	..	10	150	90
J. C. Holcomb	NE SE	..	..	..	..	40	400	240
Wyghtman, A. D.	E½ NW SE	..	..	..	..	20	200	120
Lyon, T. M.	W½ NW SE	..	..	..	..	20	150	120
Wyghtman, A. D.	SW SE	..	..	..	..	40	200	180
J. A. Lewis, Est.	SE SE	..	..	..	..	40	300	240
Steel, R.	NE NE	21	9	30	..	40	300	180
Same	W½ NE	..	..	..	..	80	300	180
88 R. Steel	SE NE	..	..	..	..	40	200	160
Rowell, A. H.	NE NW	..	..	..	..	40	250	180
Bradley, J. J.	NW NW	..	..	..	..	40	250	300
Grady, W. C.	SE NW	..	..	..	..	40	300	180
Same	SW NW	..	..	..	..	40	400	240
Gilliam, R. A.	All E½ SW lying E. of Cosatot R.	..	..	..	..	68	400	390
Roberts, C. M.	All SW SW lying E. of Cossatot River	..	..	..	..	33	300	240
Holman, G. W.	All SW lying W. of Cossatot River	..	..	..	..	59	550	360
Steel, R.	N½ SE	..	..	..	..	80	300	300
Bizzell, L. C.	S½ SE	..	..	..	..	80	500	480
Hayes Ad. Lockesburg	SE NE NE	22	9	30	..	10	Assessed in lots.	
Sutton, A. A.	NE NE NE	..	..	..	..	10	400	240
Wilson, Sam	E 6 A. NW NE NE	..	..	..	..	6	450	270
Hargroves, Horace	W. 4 A. NW NE NE	..	..	..	..	4	300	180

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Bandy, Arthur	SW NE NE	..	..	..	..	10	300	180
Wilder, Nora	Beg. Cor. SE NE run W. 420 ft. N. 417 ft. E. 420 ft. S. 420 ft. to pt. of beg.	..	..	..	..	4	400	240
Graves, T. W.	Beg. 420 ft. W. of NE Cor. of SE NE run W. 262 Ft. N. 417 ft. E. 262 ft. S. 417 ft. to beg.	..	..	..	..	2½	300	240
Bandy, Arthur	Beg. 293 ft. S. NW cor. of SE NE run N. 293 ft. E. 638 ft. S. 417 NW to pt. of Beg.	22	9	30	1	5¼	450	270
So. Land & T. Co.	Beg. 417 ft. S. of NE cor. SE NE run S. 243 ft. W. 660 ft. N. 243 ft. E. 660 ft. to pt. of beg.	..	..	..	..	3.68	100	60
89 D. & L. R. R. Co.	Beg. 412 ft. S. of NE Cor. of NW SE NE run S. 522 ft. W. 447 ft. N. 426 ft. W. 213 ft. N. 220 ft. SE to beg.	..	..	..	..	6½	180	180
Gilliam, R. A.	Beg. at SW Cor. SE NE run E. 560 ft. N 381 ft. W. 447 ft. N 426 ft. W. 213 ft. S. 1027 ft. to beg.	..	..	..	..	7	100	60
Arnold, J. C.	Beg. at SE cor. SE NE run N. 248 ft. W 118 ft. S. 248 ft. E 118 ft. to pt. of beg.	..	..	..	..	¾	300	210
Aubrey, Laura	Beg. 248 ft. N. of SE cor. SE NE run W. 118 N. 412 ft. E. 118 ft. S. 412 ft. to pt. of beg.	..	..	..	..	1.12	50	30

D. & E. R. R.	Beg. 118 ft. W & 660 ft. N. of SE corn. of SE NE run W. 542 ft. S. 189 ft. E. 542 ft. N. 189 ft. to beg.	..	..	..	..	2.33	100	60
Lewis, Mattie E.	Beg. 118 ft. W of SE cor. SE NE run N. 471 ft. W. 119 ft. S. 471 ft. E. 119 ft. to pt. of beg.	..	..	..	..	1.28	300	180
Jno. F. Cox	Beg. 237 ft. W. SE cor. SE NE run N. 471 W. 423 ft. S. 261 ft. E. 210 ft. S. 210 ft. E. 213 ft. W. to beg.	..	..	..	..	4.60	400	300
Jno. D. Floyd	Beg. at SE cor. SW SE NE run 210 ft. E. 210 ft. S. 210 ft. W. 210 ft. to pt. of beg.	..	..	..	..	1	200	120
Locke, J. F.	NW NE	..	..	..	..	40	250	300
Slaton, J. R.	E 2/3 N¼ NE NW	..	..	..	..	6.66	150	150
King, T. L.	W 1/3 N¼ NE NW	..	..	..	..	3.34	180	120
Rowell, A. H.	S½ S¾ NE NW	..	..	..	..	15	100	180
90 Moore, Pat	Beg. 5 Ch. S of NE cor. NE NW run 89 deg. W. 20 Ch. S. 4 Ch. to S. side of road to pt. of beg. run S. 3½ Ch. N. 89 Deg. E 5 Ch. N. 48 Deg. W. 4 Ch. N. 71 Deg. W. 2.19 Ch. to beg.	..	..	..	..	1.31	100	90
Locke, J. F.	N½ S¾ NE NW except 1.31 A. to Desc. above to Pat Moore	..	..	..	..	13.60	150	90
Wardlaw, P. A.	All E½ NW NW N. of D. & E. R. R.	..	..	..	..	4	40	30
D. E. R. R.	R. of W. NW NW	..	..	..	..	2	20	12

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Steel, Rupert	All E½ NW NW S. of D. & E. R. R.	..	..	..	..	14	140	84
	Dierks, L. & C. Co.	NW NW NW	..	..	..	..	10	100	60
	Steel, Rupert	SW NW NW	..	..	..	..	10	100	60
	Wyghtman, A. D.	S½ SW NW	..	..	..	..	20	250	150
	Steel, Rupert	N½ SW NW	..	..	..	..	20	120	120
	Gillian, R. A.	All SE NW N. of Pub. rd. Lockesburg to Hor.	22	9	30	1	6	120	72
	Wyghtman, A. D.	All SE NW S. of Pub. rd. Lockesburg to Hor.	..	..	..	..	34	400	300
	Collum, M. V.	N½ SW	..	..	..	..	80	600	480
	Raines, R. J.	S½ SW	..	..	..	..	80	700	480
	Potts, A. C.	E. 567 ft. NW SE	..	..	..	..	15	100	90
	Collum, M. V.	W 753 ft. NW SE	..	..	..	..	25	400	240
	Raines, R. J.	SW SE	..	..	..	..	40	200	240
	Ross, Chas.	Beg. at NW cor. NE SE run S. 477 ft. E 300 ft. N. 477 ft. to beg.	..	..	..	..	3¼	250	240
91	Floyd, Jno. D.	Beg. 300 ft. E of NW cor. NE SE run S. 132 ft. E. 350 ft. N. 132 ft. W. 360 ft. to beg.	..	..	..	..	1.10	100	120
	Lewis, Mattie	Beg. 300 ft. E. of 132 ft. S. of NW cor. NE SE run E. 810 ft. S. 345 ft. N. 810 ft. N. 345 ft. to beg.	..	..	..	..	6.41	400	240

Floyd, Jno. B.	Beg. NE cor. NW NW SE run S. 132 ft. E. 210 ft. N. 132 ft. W. 210 ft. to beg.	.68	200	120	
Arnold, J. C.	Beg. NE cor. NE SE run S. 132 ft. W. 118 ft. N. 132 ft. E. 118 ft. to beg.	.35	150	90	
Lewis, Mattie E.	Beg. 118 ft. W. of NE cor. NE SE run S. 132 ft. W. 119 ft. N. 132 ft. E 119 ft. to beg.	.35	150	90	
Jno. F. Cox.	Beg. 237 ft. W. of NE cor. NE SE run S. 132 ft. W. 213 ft. N. 132 ft. E. 213 ft. to pt. beg.	.69	200	120	
Lewis, Mattie E.	Beg. 132 ft. S. of NE cor. NE SE run W. 120 ft. S. 366 ft. E. 210 ft. N. 366 ft. to pt. beg.	1.80	300	180	
Doggett, J. R. Est.	Beg. SE Cor. NE SE W. 420 ft. N. 210 ft. E. 420 ft. S. 210 ft. to pt. beg.	2.05	300	180	
Dobbins, A. J.	Beg. 210 ft. N. of SE cor. NE SE run W. 630 ft. N 135 ft. E. 630 ft. S. 135 ft. to pt. of beg.	2	300	180	
Williamson, W. S.	Beg. 345 ft. N. of SE cor. NE SE run 210 ft. N. 260 ft. E. 210 ft. S. 260 ft. to beg.	1.28	200	180	
Collum, R. A.	Beg. 605 ft. N. of SE Cor. NE SE run W. 210 ft. N. 217 ft. E. 210 ft. S. 217 ft. to beg.	1.04	250	180	
92 Potts, A. C.	Beg. at SW cor. NE SE run N. 843 ft. E. 1110 ft. S. 497 ft. W. 420 ft. S. 135 ft. E. 210 ft. S 210 ft. W. 900 ft. to beg.	19	400	240	

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Bandy, Arthur	All SW NE N. of D. & E. R. R.	..	..	..	..	6	100	240
Gilliam, R. A.	All SW NE S. of D. & E. Rd.	22	9	30	1	31	350	210
Wyghtman, A. D.	All SW NE S. of public road Lockesburg to Horatio	..	..	..	..	3	30	18
Aubrey, Helen	Beg. at NE cor. SE SE run S. 300 ft. W. 1000 ft. N. 300 ft. E. 1000 ft. to pt. of beg.	..	..	..	..	6.80	250	180
Lee Francis	Beg. 1000 ft. W. of NE of SE SE run S. 300 ft. W. 102 ft. N. 300 ft. E. 102 ft. to pt. of beg.	..	..	..	..	.70	70	90
Gilliam, R. A.	Beg. at NW cor. SE SE run E. 218 ft. S. 300 ft. W. 218 ft. N. 300 ft. to beg.	..	..	..	..	1½	150	90
Bizzell, E. N.	Beg. 300 ft. S of NW cor. SE SE run E. 420 ft. S. 402 ft. W. 420 N. 420 ft. to pt. of beg.	..	..	..	..	4.04	100	120
Wardlaw, P. A.	Beg. at SW cor. SE SE run N. 618 ft. W. 420 ft. to pt. of beg.	..	..	..	..	5.96	80	60
Same	Beg. at SE cor. SE SE run N. 1020 ft. W. 900 ft. to pt. of beg.	..	..	..	..	2	400	200
Steel, R.	N½ NE NE	23	9	30	..	20	100	60
Gilliam, R. A.	S½ NE NE	..	..	..	..	20	200	100
Same	N½ SE NW	..	..	..	..	20	200	120
So. L. & T. Co.	S½ SE NE	..	..	..	..	20	100	120
Corbell, J. W.	NE SE	..	..	..	..	40	500	300

	Harwood, Miss Josie	SE SE	..	..	..	..	40	400	240
93	Arnold, C. M.	W. 396 Ft. NW NE	..	..	..	..	12	300	180
	J. T. Henry	N 5/6 E. 926 ft. NW NE	..	..	..	..	26½	500	300
	Gallaher, T. M.	E. 560 ft. S. 1/6 NW NE	..	..	..	..	1	10	12
	Malone, D. A.	W. 366 ft. E. 926 ft. S. 1/6 NW NE	..	..	..	..	½	10	12
	Same	Beg. at pt. 396 ft. E. of NW cor. of SW NE run S. 28 rods E. 366 ft. N. 28 rods W. 366 ft. to beg.	..	..	..	..	3½	400	240
	Gallaher, T. M.	Beg. NE cor. SW NE running S. 28 rods W. 560 ft. N. 28 rods E. 560 ft. to beg.	..	..	..	..	7	400	260
	Gilliam, R. A.	Beg. at SE cor. SW NE run N. 52 rd. W. 56 rds. S. 25 1/3 rds. E. 14 rds. S. 26 2/3 rds. E. 42 rds. to beg.	..	..	..	..	16	1000	500
	Methodist Church	Beg. SW cor. of SW NE run 26 2/3 E. 38 S. 26 2/3 W. 38 rds. to beg.	..	..	..	..	7	..	..
	Sanford, R.	Beg. 26½ N. SW cor. SW SE run N. 13 1/3 rds. E. 297 ft. S. 13 1/3 rds. W. 297 ft. to beg.	23	9	30	1	1.60	25	15
	A. T. Ferguson	Beg. 40 N. SW cor. of SW SE run N. 194 ft. E. 396 ft. S. 194 ft. W. 396 ft. to beg.	..	..	..	..	1½	150	150
	S. Land Towns Co.	Beg. 18 rds. E. & 26 2/5 rds. N. of SW cor. of NE thence N. 13½ rds. E. 6 rds. S. 13½ rds. W. 6 rds. to beg.	..	..	..	..	½	10	6

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Arnold, C. M.	Beg. NW SW NE run E. 396 ft. S. 100 ft. W. 396 ft. N. 100 ft. to beg.	..	..	..	..	1	10	6
Bell, C. A.	Beg. 100 S. NW cor. of SW NE run E. 396 ft. S. 262 W. 396 ft. N. 262 ft. to beg.	..	..	..	..	2¼	120	150
94 Sharp, J. A.	Beg. 362 ft. S. of NW cor. of SW NE run E. 396 ft. S. 104 W. 395 ft. N. 104 to beg.	..	..	..	..	.95	100	150
Norwood, L. H.	Beg. NE cor. NE NW run S. 390.5 ft. W. 167 ft. N. 390½ ft. E. 167 ft. to beg.	..	..	..	..	1½	300	180
Sutton, A. A.	N. 38 rds. of NW NW	..	..	..	..	19	650	420
J. R. Lusher	Beg. at stake 398 ft. S. in NE NW thence W. 513 ft. to stake thence S. 455½ ft. to stake S. 70 Deg. E. 268 ft. to stake thence N. 20 deg. E. 250 ft. to stake E. 278 ft. to stake N. 312½ ft. to beg.	..	..	..	..	4.60	500	450
Steel, A. C. Est.	Beg. 167 ft. W. of ½ mile cor. btw. Sec. 34 and 14-9-20 thence W. 624½ ft. S. main road 627 ft. W. 1198 ft. S. 483 ft. E. 498 ft. S. 210 ft. E. 1030 ft. N. 20 Deg. E. 410 ft. N. 70 Deg. W. 268 ft. N. 455½ ft. E. 346 ft. N. 390½ ft. to beg.	..	..	..	..	28.45	1200	720

Sutton, A. A.	Beg. NW cor. of NE of NW run E. 528 ft. S. 627 ft. W. 528 ft. N. 627 ft. to beg.	..	..	..	..	7.60	150	90
Hopson, J. R.	Beg. SW cor. NW NW run E. 22 2/3 rods N. 42 rds. W. 22 2/3 rds. thence S. 42 rds. to beg.	..	..	..	..	5	650	390
King, J. T.	Beg. 22 2/3 E. SW cor. of NW NW run N. 42 rds. E. 276 ft. S. 42 rds. W. 276 ft. to beg.	..	..	..	..	4.37	500	360
95 Holcomb, J. C.	Beg. 656 ft. E SW cor. of NW. NW run E 498 ft N 210 ft W 498 ft S 210 ft to Beg.	..	..	..	..	2.40	500	360
Arnold, C. M.	Beg. SE cor. of NE NW run W 462 ft N 20 deg. E 660 ft. E 278 ft S 617½ ft to beg.	..	..	..	..	5	700	420
Park, Sam P.	N ⅜ NW SW NW	..	..	..	..	3¾	300	180
S. & L. Towns. Co.	S ⅝ NW SW NW	..	..	..	..	6¼	120	600
Nall, G. A.	N 2/3 NE SW NW	..	..	..	..	7	400	360
D. & E. R. R. Co.	S 1/3 of NE SW NW	..	..	..	..	3.34	200	120
Maulduin, L. C. Est.	Beg. NW cor. of S½ NW SW run S 321 ft E 541 ft N 321 ft. W 541 ft. to beg.	23	9	30	1	4	100	90
Appleton, W. R.	Beg. 541 ft E of NW cor of S½ NW SW run S 205 ft E 365 ft N 205 ft W 365 ft to beg.	..	..	..	..	1½	10	45
Terhune, D. M.	SW SE	..	..	..	..	40	600	600
Steel, J. S.	All S ⅛ SW SW W of pub. road.	..	..	..	..	3¾	700	420
Gray, Aidule	All S ⅛ SW SW E of pub. road.	..	..	..	..	1¼	200	150
Wardlaw, P. A.	Beg. 165 ft. N SW cor of SW SW run 70 yds E 70 N 70 W 70 yds to beg.	..	..	..	..	1	10	12

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	White, J. M.	Beg. 375 ft N SW cor of SW SW run E 210 ft N 300 ft W 210 ft S 300 ft to beg.	..	..	..	..	1½	150	150
	Pearl Edwards	Beg. 675 N SW cor of SW SW run E 210 ft N 120 ft W 210 ft S 120 ft to beg.	..	..	..	..	½	100	120
96	D. M. Bizzell	Beg. 165 ft N & 210 ft E of SW cor of SW SW run E & W 640 ft N & S 14 rods to beg.	..	..	..	..	5	700	600
	Same	Beg. 10 rds. N 18½ rds W of SE cor of SW SW run W 9 rds & 46 links N 12 rds. E 16 rds & 46 lks. to road th. S 31 deg. W 13 rds. 22 lks. to beg.	..	..	..	..	1¼	150	150
	Grady, W. C.	Beg. 165 ft N SE cor. of SW SW run N 440 ft to road S 31 deg W 532 ft th. E 295 to beg.	..	..	..	..	3	50	30
	Hooper, Nona	Beg. 558 ft W SE cor 168 ft N SE cor N½ SE NW run N 103 1/3 yds W 118 ft N 183 ft W 86 ft S 164 yds. E 204 ft to beg.	..	..	..	..	2	450	600
	G. H. Caton	Beg. 558 ft. W of NE cor SE NW run S 183 ft W. 118 ft. N 183 ft E 183 ft to beg.	..	..	..	..	½	300	240
	Mitchell, J. D.	Beg. 558 ft W SE cor N½ SE NW run N 168 ft W 130 ft S 168 ft E 130 ft to beg.	..	..	..	..	½	230	180

Bell, C. A.	Beg. 688 ft W SE cor N½ SE NW run N 168 ft W 74 ft. S 168 ft E 74 ft to beg.	..	..	..	..	.18	200	120
R. S. Hunsucker	Beg. SE cor N½ SE NW run N 196 yds W 156 yds S 196 yds E 156 yds to beg.	..	..	..	..	6.30	700	540
Dillahunty, S.	Beg. 196 yds N SE cor N½ SE NW run N & S 24 yds. E & W 156 to beg.	..	..	..	..	.80	300	240
Clingan, A. J.	S 168 ft of W 558 ft of N½ SE NW	..	..	..	..	2.16	50	60
97 Rollin, Cal.	Beg. NW cor. SE NW run 209 ft. th. S. 33 deg. E 144 ft. S 42 deg. E. 185 ft. E. 58 ft. N 475 ft. W 256 ft. to beg.	23	9	31	1	2	200	180
Bell, C. A.	Begin 256 ft. E NW cor. SE NW run S 492 ft. E 184 ft. N 492 ft. W 184 ft. to beg.	..	..	..	..	2.6	50	30
D. & E. R. R. Co.	Beg. 168 ft. N SW cor. N½ SE NW run N 283 ft. th. S. 33 deg. E. 144 ft. th. S 42 deg. E. 182 ft. th. W 196 ft. to beg.	..	..	..	..	1	20	12
School Dist. #16	Begin NE cor. NE SW run S 234 ft. W 204 ft. N. 234 ft. E. 204 ft. to beg.	..	..	..	..	1.10	...	...
Floyd, F. C.	Beg. 558 ft. E NW cor. S½ NE SW run S 234 ft. 558 ft. NE 234 ft. W 558 ft. to beg.	..	..	..	..	2.90	500	360

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Cox, Jno. F.	Beg. 558 ft. E & 254 ft. S NW cor. of S½ NE SW run S 100 ft. E. 243 ft. N. 110 ft. W. 243 ft. to beg.	..	..	..	..	.60	200	180
Shannon, W. D.	Beg. 234 ft. S NE cor. of S½ NE SW run W 519 ft. S 200 ft. E 519 N. 200 ft. to beg.	..	..	..	..	2½	400	360
Sarah Wilson	Beg. in SE cor. NE SW run N 226 ft. W 579 ft. N. 90 ft. W 243 ft. S 316 ft. E 762 ft. to beg.	..	..	..	..	3.30	150	150
Baptist Church	Beg. 568 ft. S 468 ft. E SW cor. N½ NE SW run S 23 deg. W. 208½ N 67 deg. W 208½ ft. N 67 deg. W 208 ft. N 23 deg. E 208½ ft. S 67 deg. E 208½ ft. to beg.	..	..	..	..	1	...	...
98 Holman, Geo.	Beg. NW cor. NW SE run S 80 rds. E 194 yds N. 80 yds W 194 yds to beg.	..	..	..	..	3	500	300
Neal, Jim	Beg. 194 ft. E NW cor. NW SE run S 100 yds E 35 yds N 100 yds W 35 yds to beg.	..	..	..	..	1	100	90
Harris, D. H. Est.	SW NW SE	..	..	..	..	10	400	300
Skinner, E. C. Est.	Beg. NW cor SW NW SE run E 35 yds. to beg.	..	..	..	..	1	250	180

Williams, T. J.	Beg. stake 90 yds S 35 yds E of NW cor. NW SE run E 125 ft. S 140 yds W 125 ft N 140 yds to pt. beg.	..	..	..	..	1.20	600	360
Slaton, Lulu	Beg. 80 S 230 E of NW cor NW SE run S 140 yds E 160 ft. N. 140 yds W 160 ft. to beg.	..	..	..	..	1.65	400	360
Keeler, Bill	Beg. 9 yds. E NW cor. NE NW SE run S 100 yds E 60 yds N 100 yds W 60 yds to beg.	..	..	..	..	1.40	150	120
Gilliam, R. A.	Beg. NE cor. NW SE run S 66 yds W 61 yds N 66 yds. E 61 yds to beg.	..	..	..	..	.90	10	6
Same	Beg. 70 yds W 66 yds S NE cor NW SE run S 54 yds W 81 yds N 54 yds E 81 yds to beg.	..	..	..	..	1	150	150
Eliza Ennis	Beg. SE Cor. NE NW SE run W & E 70 yds N & S 154 yds to beg.	23	9	30	1	2½	150	120
Fannie L. Sparks	Beg. SE cor of NW NW SE run N 120 yds W 26 yds N 20 yds W 64 yds S 140 yds E 90 yds to beg.	..	..	..	..	2½	400	300
99 Fannie L. Sparks	Beg. SE cor NW NW SE run S 220 yds E 150 yds N 80 yds W 35 yds N 140 yds W 115 yds to beg.	..	..	..	..	5½	50	30
Jacques, A. D.	Beg. 70 yds W of SE cor NE NW SE run S 140 yds W 35 yds N 140 yds E 35 yds to beg.	..	..	..	..	1	50	30

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Sharp, S. E.	Beg. SW cor NE NE SE run E 150 yds N 100 yds W 81 yds N 20 yds W 69 yds S 120 yds to beg.	..	..	..	..	3.40	50	30
W. C. Grady	S 210 ft. SW SE SW	..	..	..	..	3.18	210	180
Same	Beg. 210 ft. N of SW cor SE SW run E 208 ft. N 45 ft. W 208 ft. S 45 ft. to beg.	..	..	..	..	.21	10	6
Same	Beg. SE cor. of SW SE SW run E 140 yds N 70 yds W 140 yds S 70 yds to beg.	..	..	..	..	2	20	12
Same	Beg. SW cor NE NE SE run E 150 yds N 100 yds W 81 yds N 20 yds W 69 yds S 120 yds to beg.	..	..	..	..	3.15	200	240
T. M. Lyon	Beg. 210 ft. N SE SW run 452 ft. N 45 ft. W 208 ft. N 350 ft. to road N 39 deg. E 216 ft. SE to beg	..	..	..	..	4½	400	360
J. T. Locke	NE SE SW	..	..	..	..	10	200	150
Locke, J. T. & Ella Bell	All NW SE SW except that part embraced in Vaughan Addition the town of Lockesburg	..	..	..	..	6¾	800	600
J. T. Locke	Beg. SE cor SE SE SW run W 80 yds N 70 yds W 140 yds N 150 yds E 220 yds S 220 yds to beg.	..	..	..	..	8	100	72

Same	Beg. 70 yds N SE cor SW SE SW run N 153 yds W 150 yds SE to beg.	..	..	..	..	2½	50	30
100 Dona Cannon	NE NE	24	9	30	1	40	200	120
Same	NW NE	..	..	..	..	40	200	120
Same	N⅜ SW NE	..	..	..	..	15	60	36
Jacques Robert	S⅝ SW NE	..	..	..	..	25	120	120
Richardson, Henry	SE NE	..	..	..	..	40	200	120
Cannon, Dora	NE NW	..	..	..	..	40	120	120
Steele, R.	W½ NW	24	9	30	1	80	400	240
W. T. Nesbett	SE NW	..	..	..	..	40	160	120
Jacques, Robt.	NE SW	..	..	..	..	40	200	120
Annie Spark	All NW SW lying S. D. & E. R. R.	..	..	..	..	35	150	100
Steele Rupert	All NW SW lying N. D. & E. R. R.	..	..	..	..	5	50	30
Harwood, Josie	All SW SW lying S. of Pub. road	..	..	..	..	36	150	360
Bell, Aud	All SW SW lying N. of Pub. road	..	..	..	..	4	150	120
Ike Whitmore	SE SW	..	..	..	..	40	400	240
Richardson, Chas.	NE SE	..	..	..	..	40	200	240
Jacques, Robt.	NW SE	..	..	..	..	40	200	240
Esbeck, J. N.	SW SE	..	..	..	..	40	200	240
Jacques, Robt.	SE SE	..	..	..	..	40	200	240
Jacques, Robt.	NE NE	25	9	30	..	40	400	240
Esbeck, J. N.	NW NE	..	..	..	..	40	200	240
Same	S½ NE	..	..	..	..	80	400	480
Whitmore, Ike	N½ NE NW	..	..	..	..	20	100	100
Gallaher, T. M.	S½ NE NW	..	..	..	..	20	100	100
Same	NW NW	..	..	..	..	40	200	200

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Same	N½ S½ NW	..	..	..	..	40	200	180
101	McWhorter, Tom	S½ S½ NW	..	..	..	..	40	200	200
	Same	SW	..	..	..	..	160	800	600
	Esbeck, J. N	SE	..	..	..	..	160	800	600
	Smith L. E. Est	E½ NE	26	9	30	1	80	520	400
	Same	E½ SW NE	..	..	..	..	20	100	100
	Michael, S. T	W½ W½ NE	..	..	..	..	40	500	250
	Smith, L. E. Est	E½ NW NE	..	..	..	..	20	100	120
	Grady, W. C	W½ NE NW	..	..	..	..	20	100	50
	Michael, S. I	E½ NE NW	..	..	..	..	20	100	120
	Steel, J. S	N 7 A. W 3/10 NW NW	..	..	..	..	7	70	32
	Turner, R. H	S. 5 A W 3/10 NW NW	26	9	30	1	5	300	240
	Michael, Ed	N 5/14 E 7/10 NW NW	..	..	..	..	10	400	300
	Appleton, O. E	S 1/6 N 1/14 E 7/10 NW NW	..	..	..	..	2	350	200
	Bixby, R. A	S 8/14 S .7 NW NW	..	..	..	..	16	800	650
	White E. E	NW SW NW	..	..	..	..	10	100	120
	Steel, J. S	E½ SW NW	..	..	..	..	20	100	120
	Same	SW SW NW	..	..	..	..	10	50	60
	Same	W½ SE NW	..	..	..	..	20	100	120
	Michael, S. T	E½ SE NW	..	..	..	..	20	250	120
	Same	E½ NE SW	..	..	..	2	20	250	100
	Steel, J. S	W½ NE SW	..	..	..	..	20	100	180
	Same	W½ SW	..	..	..	..	80	400	360
	Same	SE SW	..	..	..	..	40	160	200
	A. S. Bumgarner	NW SE	..	..	..	..	40	240	200
	Same	N½ SW SE	..	..	..	..	20	50	100

	Tidd, G. W.	S½ SW SE	..	..	..	..	20	50	100
102	H. F. Johnson	E½ SE	..	..	..	..	80	320	400
	A. C. Norland	E½ NE	27	9	30	1	80	750	480
	D. H. Harris Est.	SW NE	..	..	..	..	40	220	240
	Wardlaw, A. C.	NW NE	..	..	..	..	40	200	240
	Dulaney, T. B.	NE NW	..	..	..	..	40	400	240
	Terhune, D M.	W½ NW	..	..	..	..	80	400	480
	Harris, D. H Est.	SE NW	..	..	..	..	40	200	240
	Same	S½	..	..	..	2	320	1600	1280
	Wilson, J. R.	NE	28	9	30	..	160	800	960
	Same	NE NW	..	..	..	..	40	200	240
	Turner, R. H.	W½ NW	..	..	..	..	80	500	480
	Stephens, Mrs. Geo. A.	NW SE	..	..	..	..	40	200	150
	Michael Ed	SE NW	..	..	..	..	40	100	200
	Lambright B G.	W½ SW	..	..	..	..	80	400	300
	Edwards, Tom	E½ SW	..	..	..	..	80	200	200
	Harris D. H. Est.	S¾ NE SE	28	9	30	2	30	150	150
	Stephens Mrs. E. A.	N¼ NE SE	..	..	..	..	10	100	125
	Grady, W. C.	SE SE	..	..	..	..	40	100	50
	Same	SW SE	..	..	..	..	40	100	50
	Lewis, J. A. Est.	NE NE	29	9	30	1	40	400	240
	Sutton, A. A.	W½ NE	..	..	..	..	80	400	480
	White, J. M.	SE N E	..	..	..	..	40	240	180
	Bostick, W. R.	NE NW	..	..	..	..	40	400	240
	Same	S 13 A. NW NW	..	..	..	..	13	140	90
	Day, Henry	N 27 A. NW NW	..	..	..	..	27	260	180
	Bostick, W. R.	S½ NW	..	..	..	..	80	800	480
	Poole, T. O.	E½ SW	..	..	..	2	80	600	400
103	Bostick, W. R.	NW SW	..	..	..	..	40	400	200
	Poole, T. O.	SW SW	..	..	..	..	40	300	200

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Lambright, B. G.	E½ SE	..	..	..	..	80	400	300
Holt & Harrison	W½ SE	..	..	..	..	80	400	300
Burk, W. W.	NE NE	30	9	30	1	40	400	320
Matthews, L. T.	NW NE	..	..	..	..	40	450	360
Sherrer, G. E.	S½ NE	..	..	..	..	80	480	480
Same	Fr. E½ NW	..	..	..	2	81	650	455
Towson, E. G.	Fr. NW NW	..	..	..	..	42.07	280	210
Gore Thurman	Fr. SW NW	..	..	..	..	41.96	250	210
J. F. Gore	SE SW	..	..	..	..	40	240	210
Limbocke & Esther	Fr. NW SW	..	..	..	..	41.04	160	210
Nelson, W. G.	Fr. SW SW	..	..	..	..	40.96	200	210
Parker, J. A.	W½ NE SE	..	..	..	..	20	120	140
Bostick, W. R.	E½ NE SE	..	..	..	..	20	200	140
Parker, J. A.	Fr. N¾ NW SE	..	..	..	..	26.67	200	175
Cox, H. W.	Fr. S¼ NW SE	..	..	..	..	13.33	50	70
Same	SW SE	..	..	..	..	40	200	210
Poole, T. O.	SE SE	..	..	..	..	40	120	210
Gore, T. E.	NE SW	..	..	..	..	40	240	210
Cox, W. H.	N½ NE	31	9	30	2	80	800	560
Wllas Bros.	SW NE	..	..	..	..	40	300	280
Ramsey, Grover	SE NE	..	..	..	..	40	300	280
Cox, H. W.	N½ NE NW	..	..	..	..	20	200	140
Ramsey, Grover	S½ NE NW	..	..	..	..	20	100	140
Horn, W. W.	N½ SE	..	..	..	3	80	480	360
Cox, John	SW SE	..	..	..	..	40	300	180
104 Johnson, J. E.	SE SE	..	..	..	..	40	400	240

...ray, S. S.	Beg. SW cor. NW NW run N 420 ft E. 210 ft S 420 ft W 210 ft.	..	..	..	2	2	20	14
F. M. & Clem Walls	Beg. SE cor NW NW run N 80 yds W 336 yds S 80 yds E 336 yds	..	..	..	..	5.55	40	35
Nelson, Fannie	Beg. NW cor NW NW run S 900 ft E 210 ft. S 420 ft E 34 yds N 80 yds E 336 yds N 360 yds or 440 yds to beg.	..	..	..	..	32.45	150	140
Cox, Jno.	Beg. in NW cor. SW NW S 70 yds E 315 yds N 70 yds B 315 yds to beg.	..	..	..	..	4.55	120	84
Cox, C. H.	Beg. SW cor SW NW run E 259 yds N 370 yds W 259 yds S 370 yds.	..	..	..	..	19.60	200	140
Cox, H. W.	Beg. NE cor. SW NW run N 125 yds S 70 yds W 56 yds S 370 yds E 181 yds N 440 yds to beg.	..	..	..	..	15.85	200	140
Ramsey, Grover	E 170 yds SE NW.	..	..	..	..	15.45	100	105
Cox, H. W.	W 270 yds SE NW.	..	..	..	..	24.55	100	84
Ramsey, Grover	Beg. NW cor. NW SW run S 95 yds SE with road to pt 120 yds N 120½ yds W of SE cor of NW SW E 120½ yds N 319½ yds W 440 yds to beg.	..	..	..	..	21	120	84
Tatum, E. L.	Beg. SW cor. NW SW run 319½ yds N 120½ yds to road NW with road to pt. 95 yds S to NW cor. S 345 yds to beg.	..	..	..	..	16	80	70

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Horn, W. M.	Beg. SE NW SW run 120½ yds W120½ yds S 120½ yds E 120½ yds	..	..	..	..	3	120	84
105	H. G. Gore	Beg. NW NW SW N & S 242 yds E & W 100 yds. to beg.	..	..	..	..	5	30	21
	W. S. & R. F. Gore	Beg. SW cor SW SW run E 220 yds N 319 yds W 120 yds S 120 yds N 100 yds S 198 yds	..	..	..	..	12½	160	127
	Thompson, J. H.	E½ SW SW	..	..	..	..	20	100	360
	Same	SE SW	..	..	..	..	40	250	180
	Horn, W. M.	All NE SW lying S. public road	..	..	..	..	14	70	42
	Tatum, E. L.	All NE SW lying N. public road.	..	..	..	..	26	150	120
	Hogg, D. S.	Beg. 100 yds E NW Cor. run SW SW S 121 yds. E 120 yds N 121 yds W 120 yds	..	..	..	..	2½	50	30
	Aubrey Bros.	E½ NE	32	9	30	2	80	500	350
	Holt & Harrison	W½ NE	..	..	..	..	80	400	300
	Tollett, W. L.	E½ NW	..	..	..	..	80	640	400
	Tatum, E. L.	W½ NW	..	..	..	..	80	640	400
	Same	SW	..	..	..	..	160	1280	560
	Same	NW SE	..	..	..	..	40	400	160
	Same	W¼ NE SE	..	..	..	..	10	100	40
	Appleton, F. C.	E¾ NE SE	..	..	..	..	30	200	120
	Same	All S½ SE lying E of Cosatot River	..	..	..	..	25	150	100

Tatum, E. L.	All S½ SE lying W of Cossatot River	..	..	..	..	55	330	220
Dulaney, O. L.	NE NE	33	9	30	2	40	120	100
Edwards & Holcomb	W½ NE	..	..	..	..	80	320	100
Patterson, J. P.	SE NE	..	..	..	..	40	160	80
Edwards & Holcomb	E½ NW	..	..	..	..	80	320	160
106 Bk. of Lockesburg	NW NW	..	..	..	..	40	160	100
Aubrey Bros.	SW NW	..	..	..	..	40	160	100
Appleton, F. C. Est.	N½ SW	..	..	..	3	80	600	240
Pettus, Frank	SW SW	..	..	..	..	40	320	140
Billingsly, Chas.	SE SW	..	..	..	..	40	200	60
Peterson, J. P.	NE SE	..	..	..	..	40	100	60
Edwards & Holcomb	NW SE	..	..	..	..	40	100	40
Same	S½ SE	..	..	..	..	80	400	120
Holt, J. M.	All E½ N. E. except 4 Sq. A. in SE cor	34	9	30	2	76	800	480
Shope, W. J.	4 Sq A. in SE cor E½ NE	..	..	..	..	4	100	120
Harris, D. H. Est.	NW NE	..	..	..	..	40	200	160
Bean, C. E.	SW NE	..	..	..	..	40	200	180
Harris, D. H. Est.	NE NW	..	..	..	..	40	200	160
Peterson, J. P.	W½ NW	..	..	..	..	80	400	240
Shope, W. J.	SE NW	..	..	..	..	40	200	180
Same	N½ SW	..	..	..	..	80	600	260
Tatum, E. L.	SW SW	..	..	..	..	40	200	160
Peterson, J. P.	SE SW	..	..	..	..	40	200	160
Harrison	NE SE	..	..	..	..	40	200	160
Tatum, E. L.	NW SE	..	..	..	..	40	250	150
Harrison, R. M.	W½ SE SE	34	9	30	3	20	300	120
Johnson, Earl	S¾ E½ SE SE	..	..	..	..	15	100	60
Graves, Glen	N¼ E½ SE SE	..	..	..	..	5	200	80

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Harrison, R. M.	SW SE	..	..	..	..	40	200	160
	Howard, M. C.	N½ NE	35	9	30	2	80	400	400
	Jersey, H.	N of pub road in SW NE	..	..	..	..	37	160	200
107	Hamilton, T. G.	All SW NE S of public road	..	..	..	..	30	30	15
	Jessoy, H.	SE NE	..	..	..	..	40	200	200
	Steel, J. S.	N½ N½ NW	..	..	..	..	40	200	160
	Du Laney, T. B.	S½ N½ NW	..	..	..	..	40	200	200
	Same	SE NW	..	..	..	..	40	200	200
	Same	E 3/5 SW NW	..	..	..	..	24	150	125
	Same	N½ W 2/5 SW NW	..	..	..	..	8	50	25
	Holt, J. M.	S½ W 2/5 SW NW Except 1 Sq. A. in SW cor	..	..	..	..	7	200	125
	Tatum, E. L.	1 Sq. A in SW cor SW NW	..	..	..	..	1	150	75
	Hamilton, T. G.	W½ NE SE except 2 A. in NE cor.	..	..	..	..	18	100	100
	Green, S. J.	E½ NE SE	..	..	..	..	20	50	60
	Jessoy, H.	2 A in NE cor. W½ NE SE	..	..	..	..	2	200	100
	McNeil, B. A.	S 18 A NE SW	..	..	..	..	18	200	100
	M. E. Church	SE 10 A. of N. 22 A. NE SW	..	..	..	..	10	...	...
	Du Laney, T. B.	W 12 A of N 22 A NE SW	..	..	..	..	12	100	50
	Bean, C. E.	S½ NW SW	..	..	..	..	20	500	250
	Same	S 3 A NE SW	..	..	..	..	3	30	15
	Du Laney, T. B.	N 7 A NE NW SW	..	..	..	..	7	50	35
	Harrison, R. M.	All NW NW SW lying W of public road	..	..	..	..	6	400	250
	Petus, Frank	All NW NW SW lying E of public road	..	..	..	..	4	200	140

	Hamilton, T. G.	NW SE	..	..	..	..	40	200	200
	McNeil, B. A.	SW SE	..	..	..	..	40	300	200
108	Harrison, L. M.	SE SE	..	..	..	..	40	300	160
	Luther, Elizabeth	SW SW	..	..	..	..	40	250	160
	B. A. McNeil	SE SW	35	9	30	2	40	150	120
	Kelly, J. M.	N½ NE	36	9	30	2	80	400	250
	Sharp, M. M.	S½ NE	..	..	..	..	80	400	250
	Wagoner, O. E.	N½ NW	..	..	..	..	80	500	250
	Jessoy, H.	S½ SW NW	..	..	..	..	20	100	80
	Wagoner, H.	N½ SW NW	..	..	..	..	20	100	80
	Smith, A.	SE NW	..	..	..	..	40	300	200
	Singer, A. J.	NE SW	..	..	..	..	40	300	200
	Green, S. J.	W½ SW	..	..	..	..	80	300	160
	Kelly, E. G.	SE SW	..	..	..	..	40	300	200
	Sharp M. M.	N½ SE	..	..	..	..	80	400	300
	Kelly, E. G.	SW SE	..	..	..	..	40	300	200
	Pritchard, H. C.	SE SE	..	..	..	..	40	300	200
	Graef, D.	NE NE	7	9	30	3	40	100	80
	Same	NW NE	..	..	..	..	40	100	80
	Same	SW NE	..	..	..	..	40	100	80
	Same	SE NE	..	..	..	..	40	80	80
	Sidue, C. W.	Frl. NW NW	..	..	..	..	37.68	80	60
	Same	NE NW	..	..	..	..	40	100	80
	Same	Frl. S½ NW	..	..	..	..	78.4	400	160
	Same	W½ NE SW	..	..	..	..	20	40	50
	Dierks L. & C. Co.	E½ NE SW	..	..	..	2	20	50	50
	Johnson, Geo. R.	Frl. W½ SW	..	..	..	..	77.78	300	200
	Sidell, C. W.	W½ SE SW	..	..	..	..	20	50	50
	Dierks L. & C. Co.	E½ SE SW	..	..	..	..	20	50	50
109	Voigts, E.	NE SE	..	..	..	..	40	170	100

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Same	SE SE	..	..	..	..	40	100	100
Cheneworth, Mrs. J. J	W½ SE	..	..	..	..	80	200	200
Lee, H. A	NE NE	8	9	29	3	40	100	120
Hill, J. L	NW NE	..	..	..	..	40	150	120
Same	SW NE	..	..	..	..	40	100	120
Cannon, G. B	SE NE	..	..	..	..	40	160	120
Fisk, Maude	E 27 A NE NW	..	..	..	..	27	280	180
Cannon, J. W	W 13 A NE NW	..	..	..	..	13	80	60
Houng, W. H	SE NW	8	9	30	3	40	150	120
Gray, D.	NW NW	..	..	..	..	40	100	120
Same	SW NW	..	..	..	..	40	80	120
Thompson, J. S	SW	..	..	..	..	160	400	560
Cravens, J. B	SW SE	..	..	..	2	40	100	140
Neal, Joe & Milt	NE SE	..	..	..	..	40	100	140
Same	NW SE	..	..	..	..	40	100	140
Sharp, S. C	SE SE	..	..	..	..	40	100	140
Turrentine, H. G	Fr. NE NE	9	9	30	3	36.68	200	120
Deacon, M. C	Fr. NW NE	..	..	..	..	36.68	150	120
Same	N½ SW NE	..	..	..	..	20	50	60
Turrentine, T. G	Fr. S½ SW NE	..	..	..	..	16.68	50	30
Neal, Milton	Fr. SE NE	..	..	..	..	36.68	80	120
Lee, H. A	Fr. NE NW	..	..	..	..	36.68	100	90
Cameron, G. B	Fr. SW NW	..	..	..	..	36.68	160	120
Cameron, T. N	Fr. NW NW	..	..	..	..	36.68	100	120
Same	Fr. SE NW	..	..	..	..	36.68	100	120
110 Murphy, W. D	Fr. NE SW	..	..	..	..	36.68	100	140

Cannon, G. B.	Fr. NW SW	..	..	..	..	36.68	160	140
Neal & Neal	Fr. SW SW	..	..	..	..	36.68	100	140
Coulter, J. C.	Fr. SE SW	..	..	..	..	36.68	180	140
Turrentine, T. G.	Fr. NW SE	..	..	..	..	36.68	250	210
Coulter, E. C.	Fr. SW SE	..	..	..	..	36.68	200	210
Neal, Milton	Fr. E½ SE	..	..	..	..	73.36	360	280
Montgomery, W. B.	NE NE	10	9	30	3	40	130	180
Stewart, Mrs. G. C.	SE NE	..	..	..	..	40	130	180
Proctor, C. F.	W½ NE	..	..	..	..	80	250	240
Neal, Molton	E½ NE NW	..	..	..	..	20	50	60
Johnson, W. G.	W½ NE NW	..	..	..	..	20	50	120
Same	NW NW	..	..	..	..	40	120	240
Neal, Milton	SW NW	..	..	..	..	40	100	180
Proctor, C. F.	E½ SE NW	..	..	..	..	10	30	30
Neal, Milton	W¾ SE NW	..	..	..	..	30	100	90
Same	NE SW	..	..	..	..	40	160	280
H. W. De Neal	NW SW	10	9	29	2	40	120	175
Neal, Geo.	SW SW	..	..	..	..	40	160	280
Stewart, G. B.	SE SW	..	..	..	..	40	150	210
Same	NE SE	..	..	..	..	40	160	210
Stewart, A. B.	NW SE	..	..	..	..	40	160	210
Same	SW SE	..	..	..	..	40	160	210
Stewart, Mrs. G. B.	SE SE	..	..	..	..	40	100	140
Stewart, Mrs. G. B.	Fr. W½ SW	11	9	29	..	67½	260	240
Turner, W. C.	Fr. W½ NW	..	..	..	..	50	150	150
State of Ark	Fr. E½ W½	14	9	29	1	..	...	...
111 Holt, F. M.	NW NW	..	..	..	..	40	300	280
McFall, U. S.	SW NW	..	..	..	..	40	300	280
Murphy, W. D.	NW SW	..	..	..	..	40	400	320
Thompson, J. S.	SW SW	..	..	..	..	40	300	320

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Coulter, C. P	NE NE	15	9	29	..	40	160	210
Same	NW NE	..	..	..	..	40	160	210
Same	SW NE	..	..	..	..	40	200	280
Carter Edna W	SE NE	..	..	..	..	40	200	210
Coulter, C. P	NE NW	..	..	..	..	40	120	210
Same	NW NW	..	..	..	..	40	80	210
McFalls, Robt.	N½ SW NW	..	..	..	..	20	80	105
McFalls, Jno.	N 13 A. S½ SW NW	..	..	..	..	13	60	105
McFalls, Ed	S 7 A. S½ SW NW	..	..	..	..	7	40	35
Coulter, C. P	SE NW	..	..	..	..	40	160	280
Turrentine, J. H	NW SW	..	..	..	..	40	250	320
Murphy, W. D	S½ SW	..	..	..	..	80	240	480
Bell, Wm	NE SE	..	..	..	..	40	200	240
Clardy, J. R.	SW SE	..	..	..	..	40	240	320
Jacks, A. D.	SE SE	..	..	..	..	40	200	240
Clardy, Rich	NE SW	..	..	..	..	40	200	240
Sharp, S. C.	M½ NW SE	..	..	..	..	20	60	120
Clardy, Rich	S½ NW SE	..	..	..	..	20	100	120
Neal, M.	Frl. N½ NE	16	9	29	1	47.11	150	245
Robt. McFalls	SE NE	..	..	..	..	37.14	250	280
U. S. McFalls	SW NE	..	..	..	..	37	200	280
J. C. Coulter	NE NW	..	..	..	..	37	200	280
112 T. J. Holt	NW NW	..	..	..	..	36.97	200	280
Holt, F. M.	W½ SW NW	..	..	..	..	17.4	100	105
J. C. Coulter	N 1/3 SE NW	..	..	..	..	12.04	50	70
J. R. Clardy	S 2/3 SE NW	..	..	..	..	25	120	140

Holt, F. M.	Frl. NE SW	..	..	..	..	36.94	200	320
Same	NW SW	..	..	..	..	37.10	150	240
Bell, A. B.	SW SW	..	..	..	..	37.5	200	240
Holt, Tom	SE SW	..	..	..	..	36.98	150	240
St. James' Church	—— ——	..	..	..	..	1	...	...
Holt, Tom	NE SW NW	..	..	..	2	10	40	70
Holt, F. M.	SE SW NW	..	..	..	..	10	40	70
Geo. McFalls' Est.	Frl. N½ SE	..	..	..	..	73.97	250	400
Thompson, Jim	Fr. E½ SW SE	..	..	..	1	20	100	160
O. C. Cravens	Fr. W½ SW SE	..	..	..	..	17.09	100	160
Church	2 A. Sq. in SE cor. of Frl. SE SE	..	..	..	..	2	...	...
Geo. McFalls' Est.	Frl. SE SE except 2 A. sq. in SE cor.	..	..	..	..	34.84	120	160
Sharp, S. C.	NE NE	17	9	29	2	40	160	280
J. G. Thompson	N¾ NW NE	..	..	..	..	30	120	280
Lafayette Thompson	S¼ NW NE	..	..	..	..	10	150	105
Same	W 15/16 S½ NE	..	..	..	..	75	300	280
F. M. Holt	E 1/16 S½ NE	..	..	..	..	5	30	35
Cravens Bros.	NW	..	..	..	..	160	640	700
Bell, Wm.	E½ SW	..	..	..	..	80	300	560
Same	SE NW SW	..	..	..	..	10	30	35
Thompson, J. T.	N½ NW SW	..	..	..	..	20	130	145
113 Thompson, J. T.	SW NW SW	..	..	..	..	10	70	70
Same	W½ SW SW	..	..	..	..	20	300	280
Bell, Wm.	E½ SW SW	..	..	..	..	20	60	70
Bell, A. B.	NE SE	..	..	..	..	40	160	240
Same	SE SE	..	..	..	..	40	160	240
Bell, Wm	W½ SE	..	..	..	..	80	300	480
Edwards, E. K.	N½ NE NE	18	9	29	2	20	100	50
Jim Richardson	S½ NE NE	..	..	..	..	20	80	50

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Chenyworth, M. J. Mrs	NW NE	..	..	..	..	40	80	75
Jas. Richardson	S½ NE	..	..	..	..	80	300	200
Cheneworth, M. H. Mrs.	NE NW	..	..	..	..	40	100	100
County Farm	W½ NW NW	..	..	..	..	20	...	...
School Dist. #39	—— ——	..	..	..	..	1½	...	...
Cheneworth W. T.	Frl. E½ NW NW	..	..	..	..	25	50	50
Jacks, A. D.	Frl. SW NW	..	..	..	..	40.90	150	150
Richardson, Jas.	Frl. SE NW	..	..	..	..	41.80	160	150
Richardson, Allen	Frl. NE SW	..	..	..	..	41.84	240	200
Jacks, A. D.	Frl. NW SW	..	..	..	..	42.24	150	150
Murphy Coulter	All Frl. SW SW S. of D. & E. Rd. Co.	..	..	..	..	28	150	100
Bell, Isom	All Fr. SW SW N. of D. & E. Rd. Co.	..	..	..	..	14.53	100	75
Murphy Coulter	Frl. SE SW	..	..	..	..	44.37	200	200
Richardson, Jim	N½ NE SE	..	..	..	..	20	120	100
Coulter, Murphey	S½ NW SE	..	..	..	..	20	100	100
Cravens, T. C.	E¾ S½ NE SE	..	..	..	..	15	40	75
Coulter, Murphey	W¼ S½ NE SE	..	..	..	..	5	10	25
Same	SW SE	..	..	..	..	40	250	150
114 Coulter, Murphey	W¼ SE SE	..	..	..	..	10	50	50
Cravens, T. C.	E¾ SE SE	..	..	..	..	30	120	150
Richardson, Jim	N½ NW SE	..	..	..	..	20	80	100
Cravens, T. C.	NE NE NE	19	9	29	1	10	30	60
Richardson, J. D.	NW NE NE	..	..	..	..	10	40	60
Coulter, Murph	N½ NW NE	..	..	..	..	20	100	120

Richardson, Allen	S½ N½ NE	..	..	..	..	40	250	240
Same	N½ S½ NE	..	..	..	..	40	250	240
Coulter, Murph	S½ S½ NE	..	..	..	..	40	200	240
Same	Frl. NW	..	..	..	..	137.40	780	800
Same	Frl. S½	..	..	..	..	314.81	1500	2400
Bell, A. B	NE NE	29	9	29	1	40	200	320
Same	SE NE	..	..	..	..	40	180	320
Bell, Wm.	NW NW NE	..	..	..	..	10	50	80
Coulter, C. P	All W½ NE except NW NW NE	..	..	..	..	70	350	560
Same	S½ NW NW	..	..	..	..	20	120	160
Same	S½ NE NW	..	..	..	..	20	120	160
Same	S½ NW	..	..	..	..	80	460	640
Cravens, T. C	NW NW NW	..	..	..	..	10	50	80
Bell, Wm.	NE NW NW	..	..	..	..	10	50	80
Coulter, C. P	NE SW	..	..	..	..	40	200	400
Same	NW SW	..	..	..	..	40	100	400
Same	SW SW	..	..	..	..	40	200	400
Same	SE SW	..	..	..	..	40	300	400
Bell, A. B	NE SE	..	..	..	..	40	100	240
Coulter, C. P	NW SE	..	..	..	..	40	200	320
115 Coulter, C. P	S½ SE	..	..	..	..	80	400	800
Bell, Wm.	N½ NE NW	..	..	..	..	20	100	160
Murphy, W. D.	Frl. NE NE	21	9	29	..	37.24	470	400
Jacks, R. J.	Frl. SE NE	..	..	..	..	37.24	250	320
Coulter, Taylor	Frl. NW NE	..	..	..	..	37.2	200	320
Grant, Johnson	Frl. SW NE	..	..	..	..	37.1	250	320
W. T. Johnson	Frl. E½ NW	..	..	..	..	73.84	350	560
Bell, A. B.	Frl. W½ NW	..	..	..	..	73.30	350	560
Intrekin, R. A.	Frl. S½ SW	..	..	..	..	74.66	500	480
Same	Frl. NW SE	..	..	..	..	37.8	180	320

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Same	Frl. S½ SE	..	..	..	..	74.17	370	560
Jacks, Robt.	Frl. NE SE	..	..	..	..	37.8	250	320
Proctor, C. F	NW SW	..	..	..	..	40	250	320
Intrekin, R. A.	Frl. NE SW	..	..	..	..	34	200	160
Coulter, J. C.	NE NE	22	9	29	..	40	100	320
Miller, W. M.	NW NE	..	..	..	..	40	120	320
S. C. Sharp	SW NE	..	..	..	..	40	120	320
Coulter, J. C.	SE NE	..	..	..	..	40	100	320
Sharp, S. C.	SE NW	..	..	..	..	40	100	320
Robt. Jacks	NW NW	..	..	..	..	40	200	320
Clardy, Rich.	SW NW	22	9	29	1	40	300	320
Sharp, S. C.	NE NW	..	..	..	..	40	160	320
Same	NE SW	..	..	..	..	40	160	320
Same	SE SW	..	..	..	..	40	160	320
Lusher, J. R.	NW SW	..	..	..	..	40	200	400
Same	SW SW	..	..	..	..	40	200	400
116 Sharp, S. C.	NE SE	..	..	..	..	40	150	320
Same	NW SE	..	..	..	..	40	150	320
Same	SW SE	..	..	..	..	40	150	320
Lusher, J. R.	SE SE	..	..	..	..	40	200	400
Ferguson, A. T.	Fr. W½ NE	23	9	29	..	54.40	270	400
Same	NE NW	..	..	..	..	40	200	320
Jim Thompson	E½ NW NW	..	..	..	..	20	100	160
Hattie Thompson	W½ NW NW	..	..	..	..	20	100	160
John McFall	SW NW	..	..	..	..	40	200	320
O. C. Cravens	NW SW	..	..	..	..	40	200	320
J. B. Cravens	SW SW	..	..	..	..	40	200	320

Taylor Cravens	Frl. E½ SW	..	..	..	..	55	270	400
Unknown	All SE NW W. of Saline River	..	..	..	..	20	200	160
Lusher, J. R.	NW NW	26	9	29	..	40	200	400
Same	SW NW	..	..	..	..	40	300	400
Same	W½ SW	..	..	..	..	80	450	700
Lusher, J. R.	Fr. N½	..	..	..	..	296.18	1400	2400
Owens, A. P.	Fr. S½	..	..	..	..	295.50	1400	2100
Cunningham, F. P.	Fr. NE	28	9	29	..	140.67	700	1460
Shannon, W. D.	W¾ NW	..	..	..	..	107.57	900	1000
Burgess, W. N.	E¼ NW	..	..	..	..	40	350	480
Walters, J. E. Est.	Fr. SW	..	..	..	..	154.58	900	1050
Owen, A. P.	Fr. E½ SE	..	..	..	..	73.76	400	700
Cunningham, F. P.	Fr. NW SE	..	..	..	..	36.83	200	350
Owens, A. P.	Fr. SW SE	..	..	..	..	36.83	200	350
Coulter, C. P.	N½ N½	29	9	29	1	160	790	1600
117 McLoed, Robt.	S½ NE	..	..	..	..	80	400	640
Carroll Tull	SW NW	..	..	..	..	40	200	480
Same	W¾ SE NW	..	..	..	..	30	150	320
McLoed, Robt.	E¼ SE NW	..	..	..	..	10	50	80
Same	NE 8¾ A. of E½ NE SW	..	..	..	..	8¾	40	64
Edwards, Roy	S 1¼ A. E¼ NE SW	..	..	..	..	1¼	10	8
Same	S 5A. W¾ NE SW	..	..	..	..	5	20	40
Carroll Tull	N 25A. W¾ NE SW	..	..	..	..	25	100	280
Same	NW SW	..	..	..	..	40	170	400
Edwards, Roy	E½ E½ SW SW	..	..	..	..	10	50	40
Hughes, A. H.	W¾ SW SW	..	..	..	..	30	220	240
Edwards, Roy	SE SW	..	..	..	..	40	300	240
McMurry, T. J.	S ⅔ NE SE	..	..	..	..	26.66	200	240
McLoed, Robt.	N ⅓ NE SE	..	..	..	..	13.34	170	160
Same	N ⅓ E½ NW SE	..	..	..	..	6.67	30	48

Assessment Record Road Improvement—*Continued.*

Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
Same	N 7/8 W½ NW SE	..	..	..	..	16.50	90	120
McMurry, T. J.	S ¾ E½ NW SE	..	..	..	..	13.33	60	120
Same	SE SE	..	..	..	..	40	300	240
Edwards, Roy	All SW SE except 3¾ A in SE cor.	..	..	..	..	36¼	200	160
Roden, J. J.	3¾ A. Sq. in SE cor of SW SE	..	..	..	..	3¾	20	24
Edwards, Roy	S ⅛ W½ NW SE	..	..	..	..	2½	10	16
Bizzell, D. N.	SE NE	30	9	29	1	40	300	280
Eskride, J. W.	All NE NE S. road	..	..	..	..	25½	200	320
Coulter Murphy	All NE NE NE N. rd	..	..	..	..	14½	100	120
Same	W½ NE	..	..	..	..	80	410	800
118 Coulter Murphy	NE NW	..	..	..	..	40	200	480
Same	SE NW	..	..	..	..	40	200	320
Jacks, Robt.	All W½ SW S. rd.	..	..	..	..	57	350	400
Coulter Murphy	All W½ NW N. rd.	..	..	..	..	23	180	240
Same	Frl. NE SW	..	..	..	..	40½	200	320
Esbeck, J. M.	Frl. W½ SW	..	..	..	..	81.30	500	640
McLoed, Robt.	Frl. SE SW	..	..	..	..	40.57	100	320
Bizzell, D. N.	NE SE	..	..	..	..	40	200	320
Coulter Murph-	NW SE	..	..	..	..	40	200	320
Pritt, H. A.	S½ SE	30	9	29	1	80	400	640
Hughes, H. A.	NE NE	31	9	29	2	80	600	560
Carroll, A. M.	S½ NE	..	..	..	..	80	600	560
Weonett, —	E½ NW	..	..	..	..	80	400	560
State 1914	Frl. NW NW	..	..	..	..	40.76	200	280
Carroll, Tull	Frl. SW NW	..	..	..	..	41.36	150	140
Derainy, J. W.	S 25A. Fr. NW SW	..	..	..	..	25	100	210

Carroll Tull	N. 16 A. Fr. NW SW	..	..	..	..	16	40	70
State 1917	E ⅝ SW SW	..	..	..	..	25	..	..
Skinner, J. H.	W ⅜ SW SW	..	..	..	..	15	100	105
Burkhead, C. W.	N 4/5 SE SW	..	..	..	..	32	210	350
Nichols Kate	S 1/5 SE SW	..	..	..	..	8	40	35
Cornelison, D. A.	SE SE	..	..	..	..	40	250	280
Woenst, A. M.	NE NW	..	..	..	..	40	200	280
Carroll, A. M.	NW SE	..	..	..	..	40	300	280
Cornelison, D. A.	NE SE	..	..	..	..	40	200	280
Skinner, E C. Est.	E 3/5 SW SE	..	..	..	..	24	100	140
119 Burkhead, C. W.	W 2/5 SW SE	..	..	..	..	16	80	112
McMurry, T. J.	NE NE	32	9	29	2	40	200	280
Same	SE NE	..	..	..	..	40	200	280
Roden, J. J.	NW NE	..	..	..	..	40	350	280
Houser, Mrs. M. F.	SW NE	..	..	..	..	40	200	350
Roden, J. J.	NE NW	..	..	..	..	40	300	280
Same	E¼ W½ NW	..	..	..	..	20	200	280
Coulter, John	W¾ W½ NW	..	..	..	..	60	550	420
Bryan, N. J.	SE NW	..	..	..	..	40	200	350
Nall, G. A.	NE SW	..	..	..	..	40	200	280
Powers, C. L.	NW SW	..	..	..	..	40	200	280
Nall, G. A.	S½ SW	..	..	..	..	80	320	560
Same	SW SE	..	..	..	..	40	200	280
McMurray, T. J.	NE SE	..	..	..	..	40	200	280
Buck, J. T.	SE SE	..	..	..	..	40	200	280
Nall, G. A.	NW SE	..	..	..	..	40	200	280
Owens, A. P.	E½ NE	33	9	29	2	80	600	730
Craig, W. A.	W½ NE	..	..	..	..	80	500	700
Same	E½ NW	..	..	..	..	80	400	700
Sharp, R. M.	W½ NW	..	..	..	..	80	500	700

Assessment Record Road Improvement—*Continued.*

	Name of supposed owner.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Ass'd value.	Total benefits.
	Craig, W. A.	N½ NE SW	..	..	..	..	20	120	210
	Devaney, T. B.	S½ NE SW	..	..	..	..	20	120	210
	Buck, J. T.	W½ SW	..	..	..	..	80	450	560
	De Lony, T. B.	SE SW	..	..	..	..	40	250	280
	Latimer, J. W.	E½ SE SE	..	..	..	3	20	200	180
	Same	E½ NE SE	..	..	..	..	20	160	180
120	De Loney, T. B	SW SE	..	..	..	..	40	250	240
	Same	W½ E½ SE	..	..	..	..	40	250	240
	Same	S ⅝ NW SE	..	..	..	..	25	150	180
	Craig, W. A.	N ⅜ NW SE	..	..	..	..	15	60	90
	Owens, A. P.	Frl. E½ NE	34	9	29	2	67.18	200	420
	Same	Frl. NW NE	..	..	..	..	35.95	150	245
	Same	Frl. SW NE	..	..	..	..	35.92	150	245
	Same	NW	..	..	..	..	168.72	800	1120
	Kennedy, T. A.	Frl. E½ SW	..	..	..	3	78.68	450	480
	Latimer, J. W.	Frl. NW SW	..	..	..	..	41.62	250	240
	Owens, A. P.	Frl. E½ SE	..	..	..	..	65.42	350	390
	Kennedy, T. A.	Frl. W ½ SE	..	..	..	..	66.76	350	390
	Latimer —	SW SW	..	..	..	..	40	200	240
	Owens, A. P.	Frl. W½ W½	35	9	29	..	155.71	800	900

Name.	Subd. of land.	Lot.	Block.	Present value.	Total benefits.
Edwards, Lyda		.....	1	500	300
C. P. Church	N½	.....	2	...	...
Coulter, C. P	S½	.....	2	400	240
So. L. & T. Co		.....	3	1150	960
Clingan, A. J		.....	4	600	600
Same		.....	5	100	60
C. P. Church		.....	6	...	...
Henry, J. T	S½ NE¼	.....	7	150	90
Burkhead, C. W	N½ NE¼	.....	7	650	480
Henry, J. T	N½ SE¼	.....	7	150	90
Tatum, Mrs. L. M	N½ S½ SE	.....	7	250	240
Gross, J. G	S¼ SE¼	.....	7	300	240
Burkead, C. W	W½	.....	7	300	180
Locke, Mrs. P. A		1	8	100	60
Same		4-5-6	8	500	300
Graves	N¼	2	8	200	180
Russey, C. W. Est	S¾	2	8	100	60
Bk. of Lockesburg	W½	3	8	1300	900
Grady, R. W	E½	3	8	1200	840
Edwards, Lyda	E½	.....	9	350	300
So. L. & T. Co	NW¼	.....	9	100	60
Edwards, Roy	SW¼	.....	9	200	120
Wardlaw, Mary W		.....	10	600	420
Pickens, Maggie	E½	.....	11	150	120
Rea, Jno. C	W½	.....	11	350	240
122 Skinner, H. L		1	12	200	120

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Present value.	Total benefits.
Same		6	12	380	300
S. L. & T. Co		2	12	100	60
Arnold, J. C	N½	3	12	200	120
Norwood, M. L	S½	3	12	50	30
Langford Bros	N½	4	12	400	240
S. L. & T. Co	S½	4	12	150	240
Floyd	N½	5	12	400	240
Bizzell, D. N	S½	5	12	200	240
Graves, W. J	E½	.....	13	650	390
Same	NW¼	.....	13	200	120
Same	N½ SW¼	.....	13	150	720
D. A. Maxwell	S½ S½ SW	.....	13	1000	720
Skinner, H. L	N½ S½ SW¼	.....	13	1000	720
Leeper, Lillie M		1	14	1700	1200
Same		2	14	200	300
McCown, F. N. Est	E½	3	14	100	90
Lewis, J. A. Est	E 21 ft. W½	3	14	150	120
Owens, A. P	W 30 ft. W½	3	14	200	180
Bernice Masonic Lodge		4	14	200	180
McCown, T. W. Est		5	12	200	180
Same		6	14	200	180
Norwood, M. L	W¾ SE	.....	15	50	30
Redmon Lodge	E¼ SE	.....	15	300	180
Johnson, Oscar	NE¼	.....	15	250	240
Bell, W. W	NW¼	.....	15	100	120
Same	W½ SW	.....	15	100	60
123 Abbott, W. T	E½ SW	.....	15	50	90

Edwards, V. J.	.....	.....	16	450	200	
Norwood, M. L.	.....	.....	17	3000	1800	
Boyce & Edwards	.....	1	18	200	240	
Voyals, Rev. M. L.	E½	2	18	120	72	
Edwards, E. K.	W½	2	18	200	120	
Same	W½	3	18	70	480	
Gilliam, R. A.	E½	3	18	100	480	
Wardlaw & Mauldin	E½	4	18	1250	840	
Grady, R. W.	W½	4	18	1250	960	
I. O. O. F.	.....	5	18	150	120	
Edwards, Tom	E½	6	18	50	30	
Voyles, Rev. M. L.	E½ W½	6	18	150	90	
Edwards, E. K.	W½ W½	6	18	20	18	
Sparks, M. A.	SW	.....	19	100	240	
Johnson, Henry	S 65 ft.	.....	19	50	30	
Sevier County	S¼ W1/3	.....	19	...	30	
Sparks, M. A.	S1/3 E½	.....	19	200	180	
Slaton, D. H.	W 53 ft. N 65 ft.	.....	19	200	300	
Sparks, M. A.	S 37 ft. NW¼	.....	19	30	30	
Nalls, G. H.	N½	.....	20	400	240	
Same	S½	.....	20	100	60	
School Dist. 16	.....	.....	21	...	...	
Sparks, M. A.	E½	.....	22	20	60	
Williams, T. J.	W½	.....	22	100	60	
Zachary, Laura	S½	.....	23	200	180	
124 Johnson, R. E.	S¾ NW	.....	23	100	60	
Ellis, J. S.	N¼ NW	.....	23	200	120	
Johnson, R. E.	N½ E½	.....	23	100	60	
Norwood, M. L.	.....	.....	24	200	150	
Edwards, V. J.	.....	.....	25	50	30	

Assessment Record Road Improvement—*Continued.*

Survey B to Town of Lockesburg, Ark.

Name.	Subd. of land.	Lot.	Block.	Present value.	Total benefits.
Park, W. C.		.....	1	500	360
Same		1 to 8	2	440	270
Same	E½	9	2	10	6
C. Steel	W½	9	2	10	6
Park, W. C.		10–11	2	20	12
Steel, C.		12–13	2	1200	500
D. A. Maxwell	S 291 N½	.....	3	50	30
Boyce, A. P.	S½	.....	3	300	240
S. L. & T. Co.	N 90 ft N½	.....	3	20	12
D. A. Maxwell	S 672 ft.	.....	4	350	240
S. L & T. Co.	N 90 ft.	.....	4	20	12
Aubrey Buck	S 672 ft.	.....	5	350	240
S. L. & T. Co.	N 90 ft.	.....	5	20	12
Bostic, W. R.		.....	6	100	60
Same	W½	.....	7	400	300
Mauldin, L. C.	E½	.....	7	400	240
Boyce, W. T.		.....	8	400	300
McCown, T. W.		.....	9	100	120
Same		.....	10	100	120

125 *Vaughan Addition to Town of Lockesburg.*

Arnold, Mrs. Minnie		.....	1	200	120
Appleton, W. R.		1	2	120	120
Same		2	2	120	150

Burkhead, C. W	N½		3	2	10	24
Elkins, R. M	S½		3	2	10	12
Elkins, R. M			4 to 9	2	60	36
Hargrove, S. E			10	2	130	120
Same			11	2	120	72
Bell, W. W			12 to 15	2	330	240
Bell, A. Z			.....	3	120	72
Same			.....	4	160	96
Catholic Church			1 to 9	5	...	...
Baptist Church			10 to 16	5	...	...
Same	Part		.....	6	...	...
Dulaney, T. B			1 to 7	6	600	360
S. L. & T. Co			.....	7	100	60
Penney, James			1 to 11	8	1100	660
Elkins, R. M			12	8	120	120
Same			13	8	120	120
Gilliam, A. B			14	8	300	180
Same			15	8	50	30
Same			16	8	50	30
Bell, A Z			1 to 8	9	80	48
Steel, Frank			9 to 10	9	20	30
Gilliam, R. A			11 to 12	9	300	240
Bell, Mrs. Mary			13 to 16	9	370	240
126 Bell, A. Z			1-2	10	40	24
Nichols, W. F. Est			1 to 7	11	580	360
Gilliam, R. A			1 to 5	12	600	360

Selvidge Addition to Town of Lockesburg, Ark.

Cannon, Lena			.....	1	600	360
Same			.....	2	200	120

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Present value.	Total benefits.
Dillahunty, Thos.		.....	3	600	360
Norwood, M. L.		.....	4	750	540
Same		.....	5	150	90
Same		.....	6	100	60
Ellis, J. S.		.....	7	500	300
Norwood, J. P.		.....	8	800	480
	Hayes Addition to Town of Lockesburg, Arkansas.				
Hayes, R. L.		1 to 6	4	60	36
Knox, H. B.		7 to 12	4	60	36
King, L. F.		13 to 16	4	40	24
Blackstock, M. D.		17 to 26	4	100	60
Locke, Jno. T.		1 to 6	5	60	36
Hayes, R. L.		7 to 12	5	60	36
Norwood, M. L.		13 to 16	5	40	24
Same		17 to 25	5	90	54
King, L. F.		26	5	260	180
Hayes, R. L.		27 to 38	5	120	72
Wilder, John		1-2	6	20	24
Hopson, J. R.		3 to 15	6	130	78
Tatum, Mrs. Linda		16-17	6	20	12
Wommack, E. L.		18 to 36	6	190	120
Wilder, Jno.		37-38	6	20	12

127 To the Board of Commissioners of Road Improvement District No. 3, Sevier Co.:

We, the undersigned board of assessors of Road Imp. Dist. No. 3 of Sevier County, Ark., beg to report that pursuant to instruction heretofore given us by the Board of Commissioners of Road Improvement District No. 3 of Sevier County, Ark., We, as such board of assessors have assessed the benefits accruing to the lands, railroads, telegraph and telephone lines, pipe lines, electric light plants, express companies, Pullman car company, and such other real property embraced in territory as described in your instructions and not embraced in original district by reason of improvements to be made by said Imp. Dist. No. 3 as follows:

Lockes Heights Addition to De Queen.

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
128 Blount, F. M.		....	9	500	180
Cornstubble, Chas.	NE¼	....	10	70	25.20
Thomas, A. E.	NW¼	....	10	270	97.20
Locke, C. B.	S½	....	10	70	25.20
School	E2/3	....	11	...	.....
Am. Bld. & L. Assn.	W1/3	....	11	200	72
Leslie Frank	W1/3 SE	....	12	100	36
Unknown	E1/3 SW	....	12	10	4.20
Collins, G. W.	N½	....	12	200	72
Carlton, J. T.	E1/3 S½	....	12	80	28.80
Greenwald, Flora	W1/3 S½	....	12	80	28.80
Dawkins	N1/3	....	13	300	108
Breedon, W. I.	S2/3	....	13	400	144
Backley, E. L.	E1/3 NE¼	....	14	50	18
Chamberlain, Wm	W½ E2/3 NE	....	14	20	7.20
Locke, J. P.	W1/3 NE	....	14	30	10.80
Chamberlain, W. M.	E2/3 NW	....	14	150	54
Same	W1/3 NW	14	14	50	18

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Stafford, Henry	....	....	14	350	126
Danneck, J. S.	SE¼	....	14	50	18
Locke, C. B.	N½ W2/3 S½	....	15	150	54
Fathon, R.	E1/3 S½	....	15	150	54
Blount, F. M.	N½	....	16	100	36
Same	S½	....	16	50	18
Reisor, C. B. L.	E1/3 N½	....	1	20	7.20
129 Taylor, T. G.	SE¼	....	1	150	54
Garrison, W. D. Est.	N½ E2/3 N½	....	1	180	64.80
Richmond, J. R.	W1/3 N½	....	1	150	54
Smith, Christina	SW	....	1	150	54
Reisor, C. B. L.	SE	....	2	100	36
Same	N½	....	2	50	18
Bank of De Queen	SW	2	2	100	36
Pollock, Lula	E2/3 SW	....	3	50	18
Schmerker, J. C.	E1/3 SW	....	3	200	72
Reisor, C. B. L.	E½	....	4	50	18
Dierks Lbr. Co.	W½	....	4	100	36
Reisor, C. B. L.	E½	....	5	30	10.80
Dierks Lbr. Co.	W½	....	5	100	36
Castleberry, M.	E 60 ft. NE	....	6	150	54
Bates, J. M. Est.	NW¼ & W 75 ft. NE	....	6	280	84
Scarborough, F. A.	SW	....	6	140	48
Hendrix, C. A.	SE	....	6	300	108
Landmon, T.	All Blk.	....	7	400	144
Durham, C. C.	E 90 ft. NE	....	8	200	108
Macifee, Jack	W 45 ft. NE	....	8	100	36

Same	E½ NW	....	8	10	3.60	
Same	W½ NW	....	8	10	3.60	
Stafford, I. B.	E½ W2/3 S½	....	8	200	72	
Michael, L. O.	E1/3 S½	....	8	200	108	
Compton, M. M.	W1/3 S½	....	8	250	90	
130 Dierks Lbr. Co.		1	1	50	15	
Same		2	1	50	15	
Same		3	1	50	15	
Same		4	1	50	15	
Same		5	1	50	15	
Same	W 100 ft.	....	2	200	60	
Wheat, D. W.	E 50 ft.	....	2	300	90	
Parker, J. G.		1	3	50	15	
Archer, C. A.		2	3	100	30	
Parker, J. G.		3	3	150	45	
Same		4	3	80	24	
Minor, M.		5	3	250	75	
Collum, T. W.		6	3	100	30	
Same		7	3	100	30	
Harlow, Olive		8	3	150	45	
Gillan, M. A.		9	9	20	6	
Gillan, M. A.		10	3	30	9	
Same		11	3	250	75	
Same		12	3	300	90	
Carlton, Burl.		13	3	300	90	
Wright, F. M. Est.		14	3	200	60	
Wommack, J. A.		15	3	50	15	
Same		15	3	200	60	
Same		17	3	50	15	
Murphy, B. T.		18	3	50	15	

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
	Same		19	3	200	60
131	Murphy, B. T		19	3	200	60
	Same		20	3	200	60
	Stroud, S. B		1	4	30	9
	Same		2	4	20	6
	Shane, Charlie		3	4	100	60
	Same		4	4	150	45
	Johnson, J. B		5	4	150	45
	Same		6	4	100	30
	Southern, D. P		7	4	150	45
	Same		8	4	50	15
	Parker, J. L		9	4	200	60
	Same		10	4	50	15
	Sorrels, J. K		11	4	50	15
	Same		12	4	150	45
	Smithson, D. P		13	4	200	60
	McLemore, G. C		14	4	80	21
	Allison, G. M		15	4	130	39
	Same		16	4	130	39
	Kirk, S. S		17	4	300	90
	Same		18	4	300	90
	Barnhart, W. M		19	4	40	12
	Same		20	4	40	12
	Wiggins, S. F		1	5	200	60
	Same		2	5	100	30
	Storms, S. T		3	5	250	75

	Same	4	5	120	36
	Michael, L. O	5	5	30	9
132	Michael, L. O	6	5	20	6
	Bradford, I. C	7	5	40	12
	Taylor, W. H. E	8	5	80	24
	Becker, Chas	9	5	50	15
	Same	10	5	150	75
	Gilstrap, W. M	11	5	250	75
	Same	12	5	100	30
	Same	13	5	50	15
	Williamson, M. L	14	5	150	45
	Same	15	5	100	30
	Blasengame	16	5	30	15
	Same	17	5	30	15
	Same	18	5	80	24
	Shipman, Lila	19	5	300	90
	Same	20	5	150	75
	Perkins, J. Est	1	6	30	9
	Same	2	6	30	9
	Same	3	6	30	9
	Nazarene Church	4	6	...	.....
	Same	5	6	...	.....
	Bank of De Queen	6	6	80	24
	Same	7	6	70	21
	Knox, A. T	8	6	50	15
	Same	9	6	50	15
	Same	10	6	50	15
	Robinson, W. W	11	6	50	15
	Same	12	6	50	15
133	Robinson, W. W	13	6	200	60

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Same		14	6	300	90
Williangham, N. C.		15	6	150	75
Same		16	6	50	15
Same		17	6	40	12
Blasengame, Ed.		18	6	200	90
Hampson, W. F.		19	6	230	120
Brown, H. W.		20	6	80	24
Pollock, Lula		1	1	150	45
Same		2	1	400	120
Longnecker, F.	S 50 ft.	3	1	200	60
Same	N 90 ft.	3	1	200	60
Rowlett, F. L.	N½	4	1	250	75
Potts, Gabe	S½	4	1	100	30
Same		5	1	150	60
Gifford, C. M.	E½	1	2	200	105
Adams, W. J.	W½	1	2	300	90
Andrews, W. A.		2	2	400	120
Downs, Tobe		3	2	450	135
Smith, T. P.		4	2	500	150
Walters, W. W.		5	2	300	90
Reisor, C. B.		6	2	100	30
Huskins, R. D.		1	3	500	150
Same	E½	2	3	600	180
Rodgers, Frank	W½	2	3	450	135
Wallace, J. B.		3	3	600	180
Nichals, D. N.		4	3	600	180

134	Brown, A. N.		5	3	550	165
	Leonard, Lee		6	3	700	250
	Sypert, D. C.		1	6	300	90
	Babcock, S. A.		2	6	750	225
	Same		3	6	400	120
	Finley, H. A.		4	6	150	45
	Locke, C. B.		5	6	200	60
	Wood, E.		6	6	300	90
	Wesson, Sam		1	7	300	90
	Hankins, Sam		2	7	150	45
	Anderson, Leila		3	7	100	30
	Reisor, C. B.		4	7	250	75
	Same		5	7	50	15
	Baptist Church Col		6	7	...	.....
	Peppers, M. J.		1	10	20	6
	Same		2	10	20	6
	Same		3	10	20	6
	Limbocker, D. H.	E½	1	11	50	15
	Brooks, D. A.	W½	1	11	150	45
	Messer, E.		2	11	150	45
	Wingo, O. T.		3	11	100	30
	Caldwell, Mattie		4	11	100	30
	Harris, Osie		5	11	30	9
	Same		6	11	30	9
	Peppers, M. J.		7	11	30	9

Braley Addition, De Queen, Ark.

	Raines, Geo.	E1/3 S½	....	1	600	180
135	Alexander, Emma	W2/3 S½	....	1	800	240

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Nichalson, C. J.	N½	....	1	250	75
Pride & Pride		....	2	500	150
Rodgers, A. J		1	13	50	15
Same		2	13	50	15
Am. Bldg. & Loan		3	13	240	72
Same		4	13	150	45
Same		5	13	50	15
Same		6	13	150	45
Vandyke Cooper		7	13	30	9
Same		8	13	20	6
Same		9	13	20	6
Reece, D. D		10	13	70	21
Same		11	13	70	21
Parker, J. G		12	13	120	36
Same		13	13	80	24
Van Dyke Cooper		14	13	50	15
Parker, J. G		15	13	50	15
Van Dyke Cooper		16 & 17	13	40	12
Same		18	13	20	6
Pickle, A	W1/6 N 150 ft.	....	14	50	15
Carpenter, J. L	E1/3 W½ N 200 ft.	....	14	150	60
Greeg, D. W	W1/3 E½ NE 186 ft.	....	14	200	50
Same	W½ E1/3 N½	....	14	30	9
King, E. A	N½ E 50 ft.	....	14	200	60
Marrs, W. T	S½ E 50 ft.	....	14	50	15
Same	W½ E1/3 S½	....	14	50	15

136	Reece, D. D.	W1/3 E½ S 249 ft.	....	14	50	15
	Harris, Lloyd	E1/3 W½ S 285 ft.	....	14	250	75
Pickle, A.		W2/3 W½ S 285 ft.	....	14	500	150
Unknown		E½ W1/3 N 150 ft.	....	14	100	30
Collum, C. A.		W½	....	31	400	120
K. C. S. Ry.		E½	....	31	150	45
Same		All	....	32	420	126
Same		All	....	33	40	12
Detner, Chas.			1	34	60	18
Same			2	34	60	18
Same			3	34	60	18
Same			4	34	60	18
K. C. S. Ry.			5	34	10	3
Same			6	34	10	3
Same			7	34	10	3
Same			8	34	10	3
Same			9	34	10	3
Same			10	34	10	3
Same			11	34	10	3
Same			12	34	10	3
Same			13	34	10	3
Same			14	34	40	12
Same			15	34	10	3
Same			16	34	10	3
Same			17	34	10	3
Same			18	34	10	3
	Same		1	1	400	120
137	Cooper, H. H.		2	1	1250	375
	Lake & Benton		3	1	1250	375
Same						

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Same		4	1	1250	275
Goff, D. C.		5	1	300	90
Braley, C. A.		1	2	150	45
Same		2	2	150	45
Dierks, Herman		3	2	100	30
Same		4	2	100	30
Same		5	2	100	30
Same		6	2	100	30
Cooper, H. H.		7	2	150	45
Johnson, Lucintha		8	2	150	60
Landman, T.		9	2	200	60
Same		10	2	200	60
Luton, J. B.		11	2	200	60
Same		12	2	6000	1800
Same		13	2	6000	1800
Same		14	2	500	60
Braley, C. A.		1	3	200	45
Nicholson, C. J.		2	3	120	36
Same		3	3	130	36
Nicholson, N. J.		4	3	120	36
Same		5	3	110	33
	Fenton, W. O.	6	3	70	21
138	Fenton, W. O.	7	3	60	18
	Same	8	3	50	15
Same		9	3	80	24
Same		10	3	70	21

Same	11	3	60	18	
Same	12	3	50	15	
Luton, J. B.	13	3	150	45	
Same	14	3	150	45	
Same	15	3	250	75	
Same	16	3	2000	450	
Same	17	3	150	45	
Dierks, Herman	18	3	150	45	
Nicholson, C. J.	19	3	150	45	
Same	20	3	600	180	
Same	21	3	150	45	
Shaw, H. S.	1	4	30	9	
Same	2	4	30	9	
Townsend, H. C.	3	4	30	9	
Same	4	4	50	15	
Same	5	4	30	9	
Morris, W. J.	6	4	100	30	
State	7	4	50	15	
State	8	4	50	15	
Helms, L. O.	9	4	100	30	
State	10	4	50	15	
City of De Queen	11	4	...	.....	
Townsend, H. C.	12	4	30	9	
139 Cooper, H. H.	1	5	100	30	
Same	2	5	50	15	
Nall, B. T.	3	5	20	6	
Carlisle, W. H.	4	5	100	30	
Mallory, G. W.	5	5	120	36	
Same	6	5	50	15	

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
State		7	5	30	9
State		8	5	30	9
State		9	5	20	6
State		10	5	20	6
State		11	5	20	6
State		12	5	20	6
K. C. Ry. Co.		1	6	100	30
Same		2	6	100	30
Same		3	6	120	36
Same		4	6	30	9
Same		5	6	30	9
Same		6	6	30	9
Nall, B. F.		7	6	100	30
Same		8	6	90	24
Same		9	6	240	72
Townsend, H. C.		10	6	100	30
Same		11	6	20	6
Same		12	6	20	6
Same		1	7	20	6
Same		2	7	20	6
K. C. S. Ry. Co.		3	7	20	6
Same		4	7	20	6
Same		5	7	20	6
Same		6	7	20	6
Same		7	7	10	3
Same		8	7	10	3

	Same		9	7	60	18
	Wilson, Jno. W		10	7	200	60
	Tribble, A. L		11	7	60	18
	Same		12	7	70	21
	Collins, W. H		1	8	40	12
	Richardson		2	8	150	45
	Smith, Mrs. A. A		3	8	100	30
	Same		4	8	150	45
	Simms, W. M		5	8	250	75
	Same		6	8	70	21
	Grubbs, W. L		7	8	300	90
	Same		8	8	70	27
	Same		9	8	70	27
	State		10	8	40	12
	Sullivan, J. F		11	8	40	12
	Same		12	8	150	175
	Brooks, D. A		1	9	30	9
	Same		2	9	30	9
	Same		3	9	60	18
	Asher, D. M		4	9	150	45
	Same		5	9	100	30
141	Simms, W. J		6	9	200	60
	Babcock, S. E	W½	7	9	300	90
	Same	E½	8	9	100	30
	Cheneworth, S. N		8	9	50	15
	Same		9	9	200	60
	Leslie. R. E	W½	10	9	50	15
	Fenell, G. L	E½	11	9	50	15
	Fears, E. L		11	9	50	15

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Fears, Mrs. E. L.		12	9	50	15
Lee, J. A.		1	10	50	15
Same		2	10	20	6
Same		3	10	200	6
Same		4	10	300	90
Turrentine, G. S.		5	10	80	24
Same	N 90 ft.	6	10	600	180
Sullivan, J. T.	S 50 ft.	7	10	200	60
State	N 90 ft.	7	10	20	6
Sullivan, J. T.	S 50 ft.	8	10	100	30
State		8	10	30	9
Morris, S. M.		9	10	200	60
Same		10	10	200	60
Same		11	10	200	60
Townsend, H. C.		12	10	20	6
Reese, D. D.		1	11	50	15
Same		2	11	50	15
Same		3	11	20	6
142 Same		4	11	20	6
Same		5	11	20	6
Same		6	11	20	6
Bank of De Queen		7	11	450	135
Grant, J. P.		8	11	250	75
Kinbrough, W. H.		9	11	300	90
Austin, R. R.		10	11	400	30
Walker, W. N.		11	11	100	30

Same	12	11	400	120	
Dierks, Herman	1	12	200	60	
Same	2	12	300	90	
Same	3	12	200	60	
Locke, C. B	4	12	200	60	
Same	5	12	200	50	
Same	6	12	200	60	
Same	7	12	200	60	
Same	8	12	200	60	
Same	9	12	200	60	
Same	10	12	200	60	
Reece, D. D	11	12	200	60	
Same	12	12	600	180	
Locke, C. B	13	12	500	150	
Reece, D. D	14	12	100	30	
Same	15	12	100	30	
Same	16	12	100	30	
Same	17	12	600	180	
Rhapp, Henry	18	12	600	180	
Same	1	13	300	90	
143 Braley, C. A	2	13	200	60	
Dierks, Herman	3	13	200	60	
Same	4	13	200	60	
Gravel, Mrs. P. E	5	13	500	150	
Same	6	13	200	60	
Same	7	13	200	60	
Dierks, Herman	8	13	400	120	
Mize, Mrs. M	9	13	200	60	
Mitchell, F. G	10	13	400	120	
Same	11	13	200	60	
Steel, Mill					

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Same		12	13	200	90
Landman, T		13	13	250	900
Same		14	13	200	900
Same		15	13	200	60
Same		16	13	200	60
Hendrix, E		17	13	800	240
Edwards, Tom		18	13	200	60
Garrison, W. D		19	13	200	60
Allison, A. K. Est		20	13	150	60
Clements, S. R		21	13	200	90
Same		22	13	200	90
Dierks, Herman		23	13	200	60
Same		24	13	200	60
Smith, S. E. L		1	14	550	165
	Hobbs, J. E	2	14	200	60
144	Hobbs, J. E	3	14	200	60
	Montgomery, Jim	4	14	200	60
Same		5	14	200	60
Scarborough, F. A		6	14	300	90
Schane, Chas		7	14	350	105
Harvell, J. S		8	14	150	105
Dierks, Herman		9	14	150	45
Same		10	14	150	45
Same		11	14	150	45
Same		12	14	150	45
Same		13	14	150	45

Same		14	14	150	45
Same		15	14	150	45
Same		16	14	150	45
Leslie, R. E.		17	14	600	180
Same		18	14	150	45
Gardner, A. B.		1	15	450	135
Same		2	15	350	105
Same		3	15	350	105
Tolbert, J. E.		4	15	350	105
Reece, D. D.		5	15	100	30
Same		6	15	400	120
Scott, L. H.		7	15	200	60
Same	W½	8	15	100	30
Bradford, I. C.	E½	8	15	150	45
Same		9	15	600	180
145 Bradford, I. C.		10	15	600	180
Cheatham, B. D.		11	15	400	120
Knight, Mrs. Lena		12	15	500	120
Wellman, E. A.		13	15	500	150
Gardner, H.		1	16	250	105
Same		2	16	250	105
Scott, A. T.		3	16	250	105
Same		4	16	250	105
Same		5	16	250	105
Same		6	16	250	105
Tribble, A. L.		7	16	500	150
Same		8	16	300	90
Same		9	16	400	120
Lewis, J. H.		10	16	250	105
Same	W½	11	16	150	45

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
	Tribble, A. L.	E½	11	16	100	30
	Same		12	16	400	120
	Murphy, T. B.		1	17	400	120
	Phillips, W. W. Est.		2	17	200	60
	Clayton, J. P.		3	17	300	90
	Freeman, F. L.		4	17	300	30
	Same		5	17	300	30
	Same		6	17	300	210
	Elk Hotel		7	17	2500	1200
	Same		8	17	2500	1200
	Same		9	17	500	300
	Steel, Will		10	17	200	120
146	Marrs, W. T		11	17	500	150
	Same		12	17	300	120
	Same		13	17	300	120
	Dierks, Herman		14	17	200	120
	Same		15	17	200	120
	Same		16	17	200	120
	Tobin Bros.		17	17	1500	450
	Same		18	17	1500	450
	Hendrix, B. E.		1	18	300	90
	Same		2	18	300	90
	Same		3	18	300	90
	Dierks, Herman		4	18	300	90
	Same		5	18	300	90
	Williamson, Laura		6	18	350	105

Tobin Bros.		7	18	300	900
Same		8	18	2500	825
Tobin, M.		9	18	1500	450
Morgan, L. P.		10	18	1200	450
Brown, E.		11	18	1500	450
Same		12	18	1500	450
Lake, J. S.		13	18	1500	450
Rainey, I		14	18	1500	450
Same		15	18	1500	450
Thompson, Floy		16	18	1700	510
Steel, Frank	W 80 ft.	17	18	200	600
147 Locke, C. B.	E 25 ft.	17	18	599	180
Same	E 25 ft.	18	18	500	180
Berry, Jenny	W½ E 50 ft.	17	18	560	165
Same	W½ E 50 ft.	18	18	550	165
Bank of De Queen	W 60 ft.	18	18	3000	900
Steel, Frank	E 20 ft. W 80	18	18	1260	378
Brookes, Bishop		19	18	1500	360
Burson, G. L.		20	18	1200	230
Greenwald, Flora		21	18	1150	360
Same	W1/5	22	18	200	66
Burson, G. L.	E4/5	22	18	800	264
Cooper Bros.		23	18	4000	1500
Same		24	18	5000	1500
Mitchell, F. G.		1	19	1500	450
Knight, T. A.		2	19	100	720
Luton, J. B.		3	19	500	600
Same		4	19	500	600
Burson, G. L.		5	19	500	150
Same		6	19	500	150

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Williamson Dry G. Co		7	19	2500	780
Same		8	19	2600	780
Brooks, Bishop		9	19	1250	450
Greenwald, Flora		10	19	500	720
Smith, F. M		11	19	1600	480
Collins, Abe		12	19	1800	720
Mathews, I. W	N½	13	19	200	60
148 Locke, C. B	S½	13	19	250	75
Same	S½	14	19	50	15
Mathews, I. W	N½	14	19	50	15
Same	N½	15	19	50	15
Smith, S. E. L	S½	15	19	100	30
Same		16	19	100	30
Same		17	19	100	30
Town of De Queen		18	19	...	.....
Tribble M. E		1	20	20	6
Same		2	20	20	6
Same		3	20	20	66
Same		4	20	30	9
Same		4	20	30	9
Same		5	20	30	9
Same		6	20	30	9
Same		7	20	450	135
Same		8	20	500	135
Newcomer, T. W		9	20	100	30
Bennett, Dave		10	20	400	180

Same	W½	11	20	50	15	
Allison, A. K.	E½	11	20	50	15	
Same		12	20	350	135	
Cunningham, Geo.		1	21	350	105	
McKinley, J. J.		2	21	350	105	
Short, A. H.		3	21	500	150	
Brown, E.	W½	4	21	150	45	
149 Short, A. H.	E½	4	21	150	45	
Brown, E.		5	21	500	150	
Sellman, Mrs. M.		6	21	300	150	
Brown, Henry		7	21	150	45	
Same		8	21	150	45	
Same		9	21	150	45	
Same		10	21	150	45	
Same		11	21	150	45	
Same		12	21	150	45	
Burger, J. H.		1	22	250	75	
Same		2	22	100	35	
Morris, Mattie		3	22	200	60	
Durden, Mrs. P. M.		4	22	100	15	
Feemster, R. D.		5	22	100	35	
Same		6	22	200	60	
Hewitt, Daisy		7	22	350	105	
Dodgin, R. D.		8	22	200	50	
Coulson, W. W.		9	22	300	90	
Johnson, R. J.	E 30 ft.	10	22	30	9	
Coulson, W. W.	W 20 ft.	10	22	30	9	
Johnson, R. J.		11	22	450	135	
Same		12	22	50	15	
Weisner, M. J.		1	23	300	90	

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
Same		2	23	100	30
J. R. Saunders		3	23	500	150
Stiles, L. H		4	23	300	90
150 Dyer, Frank		5	23	300	90
Same		6	23	300	90
Richards, J. J	N½	7	23	250	75
Shipman, E. R	S½	7	23	110	33.60
Richards, J. J	N½	8	23	250	75
Shipman, Ed R	S½	8	23	120	60
Richards, J. J	N½ W½	9	23	70	21
Shipman, Ed R	S½ W½	9	23	70	21
Lindsey, Mrs. R. E	E½	9	23	30	9
Same		10	23	150	9
Same	W½	11	23	80	24
McLain, J. C	E½	11	23	300	90
Same		12	23	120	30
Smith, E. S		1	24	70	21
Same		2	24	450	135
Same		3	24	70	21
Thomas, L. A		4	24	350	105
Same		5	24	350	105
Same		6	24	350	105
Simmons	N1/3	7	24	100	30
Thomas, L. A	S2/3	7	24	120	36
Same	S2/3	8	24	50	15
Simmons, A. B	N1/3	8	24	150	45

Same	N1/3	9	24	100	15
Thomas, L. A.	S2/3	9	24	50	15
Hutchinson, C. Y.		10	24	500	150
Same		11	24	50	15
		12	24	50	15
151 Hutchinson, C. Y.		1	25	100	30
Dennis, Chas. A.		2	25	50	15
Cooper, H. H.		3	25	50	15
Same		4	25	80	24
Burson, G. L.		5	25	80	24
Same		6	25	100	60
Same		7	25	250	75
Byington, E. S.		8	25	250	75
Same	W½	8	25	50	15
Pritchit, W. C.	E½	9	25	300	105
Same		10	25	150	45
Parker, Jim		11	25	50	30
Same		12	25	400	120
Same		26	...	...	.....
School Dist. #17		1	27	80	24
Womack, J. A.		2	27	80	24
Same		3	27	80	24
Same		4	27	50	15
Tribble, T. S.		5	27	50	15
Same		6	27	50	15
Same		7	27	400	120
McKean, W. G.		8	27	400	120
Same		9	27	500	150
Merideth, Mac		10	27	400	120
Wommack, J. A.		11	27	600	150
Same					

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
	Same		12	27	1000	300
152	First Natl. Bank		1	28	3500	1050
	Greenwald, Flora		2	28	1500	435
	Burson, G. L.		3	28	1300	395
	Same		4	28	1300	395
	Brooks, Bishop		5	28	1500	435
	Collins, W. H.		6	28	1500	435
	Same		7	28	1500	435
	Lake, J. S.		8	28	1500	435
	Collins, W. H.		9	28	2250	735
	Hayes Hdw. Co.		10	28	500	150
	Sibert, E. E.		11	28	850	255
	Dierks Lbr. Co.		12	28	1750	528
	Whitten, J. S.	N 50 ft.	13	28	200	60
	Brawner, R. J.	S 60 ft. N 110 ft.	13	28	150	45
	Hayes, E. C.	S 30 ft.	13	28	250	12
	Whitten, J. S.	N 50 ft.	14	28	100	15
	Brawner, R. J.	S 60 ft. N 110 ft.	14	28	250	45
	Hayes, E. C.	S 30 ft.	14	28	150	72
	Whitten, J. S.	N 50 ft.	15	28	50	15
	Brawner, R. J.	S 60 ft. N 110 ft.	15	28	150	45
	Hayes, E. C.	S 30 ft.	15	28	240	72
	Whitten, J. S.	N 50 ft.	16	18	240	72
	Brawner, R. J.	S 60 ft. N 110	16	28	50	15
	Hayes, E. C.	S 30 ft.	16	28	250	145
	Cullen, Mike		17	28	100	15

Same		18	28	250	75	
	Clerk, J. M.	1	29	1000	300	
153	Clerk, J. M.	2	29	250	75	
	Same	3	29	250	75	
McMichael, S. E.		4	29	500	150	
Same		5	29	500	150	
Same		6	29	800	240	
Barr, T. S.		7	29	800	300	
Same		8	29	800	300	
Same		9	29	500	150	
Same		10	29	500	150	
Hadley, B.		11	29	500	150	
Smith, E. S.		12	29	500	150	
Garrison, Jno.		13	29	1650	495	
Same		14	29	1650	495	
George, H. P.		15	29	1250	600	
Tobin, M.		16	29	1250	375	
Locke, C. B.		17	29	500	150	
Thomas, W. F.		18	29	1000	300	
Wommack, J. A.		1	30	300	75	
Same		2	30	300	75	
Same		3	30	400	120	
Goff, D. C.		4	30	250	75	
Same		5	30	450	135	
Same		6	30	300	90	
Baptist Church		7	30	...	.....	
Same		8	30	...	.....	
Smith, Mrs. Felix		9	30	250	105	
Same		10	30	250	105	

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Lot.	Block.	Ass'd val.	Benefits cor. by court.
154	Church, C. P		11	30	...	.....
	Same		12	30	...	.....
		Link's Addition to De Queen.				
	Link, Alonzo		....	1	350	126
	Allison, J. M		....	2	350	126
	Saunders		....	3	400	144
	Same		....	4	50	18
	Same		....	5	50	18
	Teal, M. V		....	6	300	108
	Same		....	7	250	90
	Twitty, E. D		....	8	50	18
	Teal		....	9	250	90
	Hermon, J. C		....	10	250	90
	Link, A		....	19	50	18
	Same	Block	....	20	50	18
	Same		....	21	50	18
	Same		....	22	10	3.60
	Same		....	38	20	7.20
	Same		....	39	50	18
	Same		....	40	50	18
		Hill Crest Addition to De Queen.				
	Bank of De Queen		1	1	10	3.60
	Waters		2	1	100	3.60

	Same		3	1	10	3.60
	Bank of De Queen		4 to 6	1	30	10.80
155	Bank of De Queen		....	2	120	43.20
	Same		....	2	120	43.20
	Same		....	4	120	43.20
	Same		....	5	120	43.20
	Same		....	6	120	43.20
	Same		1 to 10 inc.	7	70	25.20
	Friend, C. A.		11	7	10	3.60
	Friend, C. A.		12	7	10	3.60
	Teal, M. V.		1	8	10	3.60
	Bank of De Queen		2 to 8 inc.	8	50	18
	Teal, M. V.		1	9	10	3.60
	Same		2 to 6 inc.	9	50	18
	Bank of De Queen		1 to 12 inc.	10	310	111.60
	Same		1 to 9 inc.	11	110	39.60
	Scarborough, Wm. & F. A.		10	11	10	3.60
	Bank of De Queen		12	11	10	3.60
	Same		....	12	120	43.20
	Same		....	13	120	43.20
	Same		1 to 10 inc.	14	100	36.00
	Shipman, Lilla E.		11	14	10	3.60
	Same		12	14	10	3.60
	Bank of De Queen		....	15	120	43.20
	Teal, M. V.		1	16	10	3.60
	Bank of De Queen		2 to 6 inc.	16	50	18
	Same		....	17	80	28.80
	Same		....	18	160	57.60
	Same		....	19	170	61.20
	Same		....	20	200	72

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
156	O'Connor, D. E.	Pt. SW SE to wit beg. 219 ft. W of SE cor. SW SE run W 341 ft. N 535 ft. E 289 ft. SE to beg.	30	8	31	3	1½	200	66.66
	Grandin, H. M.	Beg. at SE cor. NE SE run W 200 ft. N 430 ft. E 200 ft. S 430 ft. to beg.	..	..	..	..	2	250	62½
	D. & E. R. R.		..	..	..	..	4	....	.....
	Jno. Spence	Beg. 430 ft. N of SE cor. NE SE run W 200 N 235 ft. E 200 ft. S 235 ft. to beg.	..	..	..	..	1	100	50
	City Gravel Pit	Pt. NE SE	..	..	..	..	2	....	.....
	Fowler, W. M.	Beg. E of K. C. S. Ry. on N line Stillwell Ave. extended Ave. extended run E 200 ft. N 50 ft. W 200 ft. S 50 ft. to pt. beg.	..	..	..	..	½	200	50
	C. P. Service Co.	Pt. NW SE	..	..	..	..	2	50	12½
	Thomason, Jno.	Beg. 450 ft. E SW cor. of SW SE run N 210 ft. E 210 S 210 ft. W 210	..	..	..	..	1	100	50
	E. E. Griffin	Beg. 990 S of NE cor. SW SE run. W 582 ft. S 300 ft. E 582 ft. N 300 ft. to beg.	..	..	..	..	4	150	18¾
	Sorrells, J. K.	Beg. 295 ft. W and 60 ft. S NE cor. run. S 156 ft. E 20 ft. N 156 ft. W 70 ft. to beg.	..	..	..	..	.30	200	33.33
	State	Pt. SW NE	..	..	..	..	3½	....	.....

	Selph, Carl	Beg. NE cor. NE NE run. S 595 ft. W 295 ft. N 397 ft. E 70 ft. N 216 ft. E 225 ft	..	..	..	..	3.70	150	20.30
	Dierks, L. & C. Co	NE NE	..	..	..	..	40	2000	1200
157	Dierks, L. & C. Co	N½ SE NE	..	..	..	..	20	1000	600
	Same	S½ NE SE	..	..	..	..	20	3000	1800
	Same	NW NE E K. C. S. R. Co	..	..	..	..	30	200	180
	Same	SW NE E K. C. S	..	..	..	..	13½	200	120
	C. W. Pub. S. Co	NW NW SE E K. C. S	..	..	..	..	10	5000	6000
	Province, G. S	SW NW SE E K. C. S	..	..	..	..	2½	200	120
	Locke, C. B	S½NW SE E K. C. S	..	..	..	..	12	800	480
	Thomas, W. F	SW SE E K. C. S	..	..	..	..	9	100	60
	Payne, B. F	SE SE Ex. 4 A NE cor	..	..	..	..	34	800	480
	Good, Clara A	4 A NE cor. SE SE	..	..	..	..	4	500	300
	Wheatley	Fr. NE	3	10	29	3	182.04	900	600
	Hensley, W. J	Fr. NW NW	..	..	..	..	92.88	500	480
	Johnson, W. E	Fr. SW NW	..	..	..	..	41.13	300	240
	Michols Est	E½ SW	..	..	..	..	80	400	300
	Poole, J. B	W½ SW	..	..	..	..	80	400	300
	Nichols Est	E½ SE	..	..	..	..	80	400	240
	Same	SW SE	..	..	..	..	40	200	120
	Martz, Ben	NW SE	..	..	..	..	40	200	190
	Johnson, W. E	SE NW	..	..	..	..	52.66	240	300
	Devine, E. W	Fr. NE	4	10	29	3	178	1200	1246
	Coats, L. E	Fr. NE NW	..	..	..	..	50.10	250	300
	Same	Fr. W½ NW	..	..	..	..	90.21	450	480
	Shelly, Jasper	SE NW	..	..	..	..	40	200	240
	Zachry, H. C	SW	..	..	..	..	160	800	600
	Poole, F. P	NW SE	..	..	..	..	40	200	240

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
Poole, Bird	SE SE	..	..	..	..	40	200	240
Poole, D. P	SW SE	..	..	..	..	40	200	240
158 Poole, J. L.	NE SE	..	..	..	..	40	200	240
Coats, L. E.	Fr. NE	5	10	29	3	177.62	880	600
Collum, Mark	Fr. W½ NE NW	..	..	..	..	27.06	130	195
L. E. Coats	E½ SE NW	..	..	..	..	20	100	100
Cannon	W½ NW NW	..	..	..	..	10	3	50
Coats, L. E.	E½ NE NW	..	..	..	..	20	100	100
Cannon, W. M.	W¼ SW NW	..	..	..	..	10	50	80
Collum, Mark	W½ SE NW	..	..	..	..	20	100	100
Same	Fr. E¾ W½ NW	..	..	..	..	62.49	320	320
Gilliam, R. A.	NE SW	..	..	..	..	40	100	160
Cannon, W. M.	W¼ NW SW	..	..	..	..	10	50	50
Davidson, J. O. Est.	S½ SW	..	..	..	..	80	400	220
Collum, Mark	E¾ NW SW	..	..	..	..	30	150	160
Crest, H. H	E½ SE	..	..	..	..	80	400	300
Gilliam, R. A.	W½ SE	..	..	..	..	80	400	200
Cannon, W. M.	Fr. E½ NE	6	10	29	3	87.70	400	300
Latimer, Jas.	Fr. W½ NE	..	..	..	..	86.68	400	300
Pitts, Flora	SE NW	..	..	..	..	40	400	160
Nichols, Kate I.	Fr. N½ NW NW	6	10	29	3	25	100	80
W. C. Houston	Fr, S½ NW NW	..	..	..	..	20	100	80
Same	N¾ SW NW	..	..	..	..	35	100	120
Coyby, P. E.	S¼ SW NW	..	..	..	..	10.32	50	20
Miller, A. L.	E½ E½ SW	..	..	..	..	40	160	120
Conley, P. E.	W½ NE SW	..	..	..	..	20	80	40

Same		W½ SW	..	..	..	..	80	400	200
	Same	W½ SE SW	..	..	..	..	20	80	40
159	Cannon, W. M.	NE SE	..	..	..	..	40	200	200
	Miller, A. L.	W½ SE	..	..	..	..	80	500	300
Nichols & Graves		NE NW	..	..	..	..	40	250	120
Nichols, Kate J.		N½ NE NE	1	10	30	3	20	150	80
Fuller, A. E.		Fr. NW NE	..	..	..	..	43.21	100	160
Houston, W. C.		S½ NE NE	..	..	..	..	20	60	80
Fuller, A. E.		Fr. SW NE	..	..	..	..	39.09	200	200
Same		Fr. N¾ W 2/3 SE NE	..	..	..	..	26.66	100	80
Conley, P. E.		Fr. S¼ E 1/3 SE NE	..	..	..	..	3.28	10	8
Fuller, A. E.		Fr. NW NW	..	..	..	..	47	120	80
Same		Fr. NE NW	..	..	..	..	45.18	120	80
Morris, L. E.		Fr. SW NW	..	..	..	..	38.82	100	60
Hull, C. E.		E½ SW	..	..	..	..	80	240	200
Same		SE NW	..	..	..	..	40	120	60
Morris, L. E.		N½ NW SW	..	..	..	..	20	100	20
Fuller, A. E.		S½ NW SW	..	..	..	..	20	50	40
Same		SW SW	..	..	..	..	40	100	80
Same		Fr. W 2/3 E½ SE	..	..	..	..	53.32	160	100
Same		W½ SE	..	..	..	..	80	200	160
Conley, P. E.		Fr. E 1/3 E½ SE	..	..	..	..	26.48	80	30
Unknown		S¼ W 2/3 SE NE	..	..	..	..	8.88	80	40
Harrison, L. M.		Fr. NE NE	2	10	30	3	51¼	200	120
McNeil, B. A.		Fr. NW NE	..	..	..	..	49¼	100	120
Pickens, W. H.		Fr. SW NE	..	..	..	..	40.80	250	120
Morris, L. E.		Fr. SE NE	..	..	..	..	41.94	200	120
	Edwards, Roy	E½ S½ SE NW	..	..	..	..	10	50	20
160	McNeil, B. A.	Fr. N¾ NW NW Ex	2	10	30	3	51¼	100	80

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
Bell, A. Z.	Fr. S 5/8 NW NW Ex. 3.65 A in SE cor. thereof	..	..	..	..	23.27	230	80
Bennett, E. F.	W½ S½ SE NW	..	..	..	..	10	50	20
Luther, Alex.	N Frl. 15 A. NW NW	..	..	..	..	15	30	20
Davis, T. J.	W½ SE	..	..	..	..	80	400	130
Same	N½ SE SE.	..	..	..	..	20	100	40
Singer, A. J.	NE SE	..	..	..	..	40	200	80
Fuller, A. E.	S½ SE SE.	..	..	..	..	20	100	40
Davis, T. J.	E 1/3 NE SW	..	..	..	..	13.33	80	30
Bennett, E. F.	N¾ NW SW	..	..	..	..	30	120	60
Same	W 2/3 NE SW	..	..	..	..	26.66	100	60
Latimer, J. W.	S¼ NW SW	..	..	..	..	10	50	20
Middleton, J. T.	E¼ SW SW	..	..	..	..	10	50	20
Latimer, J W.	W¾ SW SW	..	..	..	..	30	160	60
Bennett, E. F.	F½ N½ SE NW	..	..	..	..	27.92	100	60
McNeil, B. A.	3.63 A in SE cor. NW NW	..	..	..	..	3.63	30	12
Bell, A. Z.	S 20 A Fr. NE NW	..	..	..	..	20	100	30
Same	SW NW	..	..	..	..	40	200	130
Middleton, W.	SE SW	..	..	..	..	40	500	300
Williamson, W. J.	E½ NE	32	8	31	2	80	600	300
Gardner, Wm.	NW NE	..	..	..	..	40	300	150
Same	SW NE	..	..	..	..	40	300	150
Barnes, B. F.	E½ NW	..	..	..	..	80	800	480
Lasley, J. H.	W½ NW	..	..	..	..	80	200	100
Denison, J. C.	NE SW	..	..	..	..	40	200	100
Lasley, J. H.	NW SW	..	..	..	..	40	450	225

	Same	SW SW	..	..	..	..	40	300	150
161	Denison, J. C	SE SW	..	..	..	..	40	300	150
	Turner, J. W	E½ SE	..	..	..	..	80	400	300
	Denison, J. C	W½ SE	..	..	..	..	80	400	300
	Macey, Ed	Fr. NE	5	9	31	..	44.19	200	264
	Bradley, J. T. / Fund, A. L.	Fr. NW¼	..	..	..	..	11.24 / 29¼	80	55 / 145
	Suate, 1917	NE SW	..	..	..	..	40	160	200
	Bell, Geo. G	S 561 ft. NW SW	5	9	31	2	17	70	85
	Brizendine, J. D	N 379.5 ft. of S 940.5 ft. of NW SW	..	..	..	..	11½	250	150
	Bell, Thos	N 379.5 ft. NW SW	..	..	..	..	11½	250	150
	Bell, Geo. G	S½ SW	..	..	..	..	80	320	400
	Maxey, Ed	NE SE	..	..	..	..	40	160	200
	Funk, A. L	NW SE	..	..	..	..	40	150	200
	Same	SW SE	..	..	..	..	40	200	200
	Maxey, Ed	SE SE	..	..	..	..	40	160	200
	Funk & Maxey	N½ NE	8	9	31	..	80	250	400
	Same	SW NE	..	..	..	..	40	120	200
	Gardner, Chas	SE NE	..	..	..	..	40	100	200
	Bell, Geo. G	E½ NW	..	..	..	..	80	320	400
	Ark. La. P. Land Co	NW NW	..	..	..	..	40	200	200
	Edwards, Tom	SW NW	..	..	..	..	40	200	200
	Clements, S. R	S¾ NE SW	..	..	..	..	30	50	150
	Bell, Geo. G	N¼ NE SW	..	..	..	..	10	40	50
	Williams, T. C	E½ SE¼ NW SW	..	..	..	..	5	10	25
	Bell, Geo. G	SW¼ NW SW	..	..	..	..	10	20	50
	Williams, T. C	W½ SE NW SW	..	..	..	..	5	10	25
162	Taylor, J. W	SW SW	..	..	..	..	40	200	200
	Cline, A. R	SE SW	..	..	..	..	40	80	200

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
Gardner, Chas.	NE SE	..	..	..	..	40	100	200
Cline, A. R.	NW SE	..	..	..	..	40	80	200
Same	S½ SE	..	..	..	..	80	160	400
Pride & Pride	N½ S½ NE NE	17	9	31	2	10	50	50
Same	S½ SW NE NE	..	..	..	..	5	30	25
Same	N½ NE NE	..	..	..	..	20	100	100
Same	S½ SE NE NE	..	..	..	..	5	50	25
Same	NW NE	..	..	..	..	40	100	200
Lake, J. S.	S½ NE SW NE	..	..	..	..	5	50	25
Pride & Pride	SW SW NE	..	..	..	..	10	50	50
Same	NW SW NE	..	..	..	..	10	50	50
Williams	N½ S½ SE SW NE	..	..	..	..	2½	20	10
Williamson, B. T. O.	N½ SE SW NE	..	..	..	..	5	30	25
Williams, R. A.	S½ S½ SE SW NE	..	..	..	..	2½	20	10
Beard, Dora	N½ NE SW NE	17	9	31	2	5	50	25
Pride & Pride	S½ NE SE NE	..	..	..	..	5	30	25
Tribble, T. S.	N½ SE SE NW	..	..	..	..	5	50	25
Pride & Pride	S½ SE SE NE	..	..	..	..	5	50	25
Tribble, T. S.	N½ NE SE NE	..	..	..	..	5	30	25
Same	NW SE NE	..	..	..	..	10	100	50
Same	SW SE NE	..	..	..	..	10	100	50
Pride & Pride	N½ NW	..	..	..	3	80	200	400
Same	SW SW NW	..	..	..	..	10	50	25
Same	E½ SE SW NW	..	..	..	..	5	30	25
Tribble, T. S.	N½ SE SW NW	..	..	..	..	5	30	25
Pride & Pride	NE SW NW	..	..	..	..	20	100	100
Same	E½ SE NW	..	..	..	..	20	100	100

Same	SW SE NW	..	..	..	..	10	50	25
Same	N½ NW SE NW	..	..	..	..	5	30	25
Holmes, C. G	S½ NW SE NW	..	..	..	..	5	30	25
Tribble, T. S	SW NE SW	..	..	..	..	10	50	50
Pride & Pride	SE NE SW	..	..	..	..	10	50	50
Same	NE NE SW	..	..	..	..	10	50	50
Same	NW NE SW	..	..	..	..	10	100	50
Judy, S	SE NW SW	..	..	..	..	10	100	50
Pride & Pride	N½ NW SW	..	..	..	..	20	50	100
Same	S½ N½ SW SW	..	..	..	..	10	50	50
Same	SW NW SW	..	..	..	..	10	50	50
Same	SW SW SW	..	..	..	..	10	50	50
Tribble, T. S	N½ NW SW SW	..	..	..	..	5	30	25
Patton, C. N	SE SW SW	..	..	..	..	10	50	50
Tribble, T. S	N½ NE SE SW	..	..	..	..	5	20	20
Balkey, A. S	NE SE SW	..	..	..	..	10	50	50
Tribble, T. S	NW SE SW	..	..	..	..	10	100	50
Pride & Pride	S½ SE SW	..	..	..	..	20	100	100
Dunn, Alice D	SE	..	..	..	..	160	400	800
Wheat, S. C	N½ NE NE NE	21	9	31	..	5	20	20
Same	S½ NE NE NE	..	..	..	..	5	20	20
Hornshell, E. J	NW NE NE	..	..	..	..	10	50	40
Jones, J. E	N½ SW NE NE	..	..	..	..	5	50	20
Tribble, T. S	S½ SW NE NE	..	..	..	..	5	50	20
Enos, H. M	SE NE NE	..	..	..	..	10	100	40
164 Pride & Pride	N½ NE NW NE	..	..	..	..	5	30	25
Boyd, Robt	S½ NE NW NE	..	..	..	..	5	50	25
Starrow, J. H	N½ NW NW NE	..	..	..	..	5	50	25
Pride & Pride	S½ NW NW NE	..	..	..	..	5	20	20
Nevins, R	SW NW NE	..	..	..	..	10	50	40

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
Pride & Pride	SE NW NE	..	..	..	..	10	50	40
Flix, J. R.	SW NE	..	..	..	..	40	250	160
Thomas, W. T.	SE NE	..	..	..	..	40	200	160
Pride & Pride	NE NE NW	..	..	..	..	10	50	40
Ayers, Alford	N½ NW NE NW	..	..	..	..	5	50	20
Pride & Pride	S½ NW NE NW	..	..	..	..	5	30	20
Tribble, T. S	W 2/5 S½ SW NE NW	..	..	..	..	2	20	8
Pride & Pride	E 3/5 S½ SW NE NW	..	..	..	..	3	20	12
Tribble, T. S	N½ SW NE NW	..	..	..	..	5	50	20
Melinsker, J	SE NE NW	..	..	..	..	10	100	40
Rober, C. A	N½ NE NW NW	..	..	..	..	5	30	20
Fowler, Maggie A	S½ NE NW NW	..	..	..	..	5	50	20
Pride & Pride	N½ NW NW	..	..	..	..	20	100	80
Same	N½ SE NW NW	..	..	..	..	5	30	20
Same	S½ SE NW NW	..	..	..	..	5	30	20
Tribble, T. S	NE SW NW	..	..	..	..	10	50	40
Same	NW SW NW	..	..	..	..	10	50	40
Lind, E. J	SW SW NW	..	..	..	..	10	50	40
Pride & Pride	SE SW NW	..	..	..	..	10	50	40
Same	NE SE NW	..	..	..	..	10	50	40
Tribble, T .S	N½ NW SE NW	..	..	..	..	5	20	20
Pride & Pride	S½ NW SE NW	..	..	..	..	5	30	20
165 Nevins, R	SW SE NW½	..	..	..	..	10	50	40
Pride & Pride	E½ SE SE NW	..	..	..	..	5	50	40
Same	W½ SE SE NW	..	..	..	..	5	30	20
Tribble, T. S	NE NE SW	..	..	..	..	10	50	40
Lambeth, R. P	NW NE SW	..	..	..	..	10	50	40

Same	SW NE SW	..	..	..	..	10	50	40
Same	SE NE SW	..	..	..	..	10	100	40
Pride & Pride	N½ NE NW SW	21	9	31	..	5	30	20
Tribble, T. S	E1/3 W3/5 S½ NE NW SW	..	..	..	..	1	10	4
Pride & Pride	E 2/5 S½ NE NW SW	..	..	..	..	2	20	8
Tribble, T. S	W 2/5 S½ NE NW SW	..	..	..	..	2	50	20
Same	NW NW SW	..	..	..	..	10	50	40
Same	SW NW SW	..	..	..	..	10	50	40
Pride & Pride	N½ SE NW SW	..	..	..	..	5	30	20
Same	S½ SE NW SW	..	..	..	..	5	30	20
Beauchamp, Z H. Est	S½ SW	..	..	..	..	80	800	320
Thomas, W. F	NE SE	..	..	..	..	40	200	160
Beauchamp, Z. H. Est	W½ SE	..	..	..	..	80	400	320
Westcott, S. & T. M	SE SE	..	..	..	..	40	200	160
Jones, J. A	NE NW	26	9	31	..	40	160	240
Same	E½ NW NW	..	..	..	..	20	80	120
Marrs & Thrasher	NW NW NW	..	..	..	..	10	250	150
Jones, J. Walter	SW NW NW	..	..	..	..	10	40	60
Same	SW NW	..	..	..	..	40	150	240
Jones, J. A	SE NW	..	..	..	..	40	160	240
Neal, A. J. S	NE SW	..	..	..	..	40	180	240
166 Burkhead, B. W	N¾ W½ SW	..	..	..	..	60	240	360
Burkhead, J. D	S½ SW SW	..	..	..	..	20	80	120
Burkhead, B. W	SE SW	..	..	..	..	40	300	240
Wood, J. A. Est	W½ NE NE	35	9	31	..	20	80	120
Gore, T. M	E½ NE NE	..	..	..	..	20	200	120
Burkhead, B. W	NE NW	..	..	..	..	40	200	240
Martin, R. E	SW NE	..	..	..	..	40	200	240
Rankin, J. A	NW NW	..	..	..	..	40	200	240
Rankin, W. C	SW NW	..	..	..	..	40	300	240

Assessment Record Road Improvement—*Continued.*

Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
Wood, J. A. Est.	NW NE	..	..	..	..	40	200	240
Leeper, J. M.	SE NW	..	..	..	..	40	200	240
Gore, T. M.	SE NE	..	..	..	..	40	200	240
Gore, T. M. Est.	W½ NE	36	9	31	..	80	320	280
Same	SE NE	..	..	..	..	40	120	240
Conatser, C.	E½ W p. N¼ NW NW	..	..	..	..	2½	50	30
Gray, S. S.	NE NE except 5 A in sq. in NW cor.	..	..	..	..	35	350	210
T. O Poole	5 A sq. in NW cor. NE NE	..	..	..	..	5	400	240
Park, T. M.	S¾ NW NW	..	..	..	..	30	150	180
Gray, S. S.	W¼ N¼ NW NW	..	..	..	..	2½	200	120
Gore & Park	E¼ N¼ NW NW	..	..	..	..	2½	120	72
Conatser, C.	SW NW	..	..	..	..	40	200	240
Walls, F. M.	S½ E½ N¼ NW NW	..	..	..	..	2½	200	120
Conatser, C.	W 26 A SE NW	..	..	..	..	26	100	156
Park, T. M.	E 14 A SE NW	..	..	..	..	14	40	84
Gore, D. L.	NE NW	..	..	..	..	40	380	240
167 Jones, J. Walbert	N½ NE	27	9	31	..	80	300	200
Jones, Joe A.	SW NE	..	..	..	..	40	200	160
Jones, J. W.	SE NE	..	..	..	..	40	200	160
Lovell, W. S.	NE SW	..	..	..	..	40	300	160
Wilson, T. T.	W½ NW	..	..	..	..	80	400	240
Jones, J. A.	SE NW	..	..	..	..	40	160	120
Johnson, Geo.	E 26 A NE NE	3	10	30	..	26	170	80
Johnson, R. J.	W 14 A NE NE	..	..	..	..	14	70	40
Same	Fr. NW NE	..	..	..	..	45.22	200	80
Johnson, Earl	Fr. SE NE	..	..	..	..	40.05	120	80

McElroy, S. B	N 27 A Fr. SW NE	..	..	..	..	27.11	90	80
Pickens, Jess	All S 13 A W pub. Rd. SW NE	..	..	..	..	6	50	80
Mund, C	All So. 13 A E pub. road SW NE	..	..	..	..	7	120	100
Cannon, Mrs. Lena	Fr. NE NW	..	..	..	..	45.24	160	80
Same	Fr. NW NW	..	..	..	..	44.15	150	80
Pickens, R. J	Fr. SW NW	..	..	..	..	40.46	400	160
McElroy, S .B	Fr. SE NW	..	..	..	..	40.41	200	120
Johnson, R. J	Fr. NE NE	4	10	30	..	42.52	200	80
McDonald, W. D	SE NE	..	..	..	..	40	200	120
Same	Fr. W½ NE	..	..	..	..	81.10	300	160
Shope, W. J	Fr. NE NW	..	..	..	..	40½	300	160
Smith, W. T	Fr. SE NW	..	..	..	..	39.40	300	160
Pickens, R. J	Fr. SW NE	..	..	..	..	39.80	250	140
Friday, F. G	Fr. NW NW	..	..	..	..	39.10	200	80
Burkhead, J. D	E½ NE NE	5	10	30	..	20	160	80
168 Burkhead, Mrs. C. A	W½ NE NE	..	..	..	..	20	160	80
Hunsucker, J. M	Fr. W½ NE	..	..	..	..	79.22	400	160
Pickens, R. J	Fr. SE NE	..	..	..	..	40.32	320	160
Gillespie, Joel	NW	..	..	..	..	160	800	320
Goree, Bros	Fr, E½ NE	6	10	30	..	77.05	770	462
Gore, A. M	NE NE	..	..	..	..	40	200	120
Hogg, D. S	Fr. SW NE	..	..	..	..	38.52	190	120
Gore, H. G	Fr. NE NW	..	..	..	..	38	260	180
Conatser, J. M	Fr. SW NW	..	..	..	..	38.10	150	90
Hogg, D. S	Fr. NW NW	..	..	..	..	38	200	120
Same	Fr. SE NW	..	..	..	..	28.10	200	120
Johnson, Grant	NW SW	3	9	29	..	40	200	240
Same	NE SW	..	..	..	..	40	200	240
Carroll, J W	S½ SW	..	..	..	..	80	320	360
Same	Fr. W½ SE	..	..	..	..	65	260	300

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
	State of Ark	NE SE	..	..	..	..	...	....	....
	Same	SE SE	..	..	..	..	...	....	....
	Cobb, R. H	Fr. NE SW	4	9	29	..	36.62	80	120
	Webb, C. M	Fr. NW SW	..	..	..	..	36.65	150	150
	Lee, H. A. Est	Fr. S½ SW	..	..	..	..	73	350	300
	Murphy, D. W. Est	Fr. NE SE	..	..	..	..	36.42	320	192
	Carroll, J. W	Fr. NW SE	..	..	..	..	36.44	120	120
	Coulter, Dave	SW SE	..	..	..	..	40	100	120
	Same	SE SE	..	..	..	..	40	100	120
	Cannon, J. M. et al	NE SW	5	9	29	..	40	100	120
	Gray, D	Fr. W½ SW	..	..	..	..	79	160	180
169	Lee, H. A. Est	Fr. E½ SE SE	..	..	..	..	21¼	50	60
	Cannon, J. M	SE SW	..	..	..	..	40	120	120
	Webb, C. M	Fr. W½ SE SE	..	..	..	..	21¼	50	60
	Same	Fr. W½ SE	..	..	..	..	85	320	240
	Same	Fr. NE SE	..	..	..	..	42½	100	120
	Heaslet, Edna	NE¼	32	8	30	..	160	1600	600
	Same	NW	..	..	..	..	160	1000	600
	Same	N½ SW	..	..	..	..	80	800	300
	Nalley Jones	E⅞ S½ SW	..	..	..	..	70	700	300
	Bales, J. L	E¼ NE SE	..	..	..	..	30	200	150
	Montgomery, M. C	W⅛ S½ SW	..	..	..	..	10	100	60
	Bales, J. L	S½ SE	..	..	..	..	80	800	300
	Same	W½ NW SE	..	..	..	..	20	200	75
	Montgomery, John	W¼ NE SE	..	..	..	..	10	100	45
	Same	E½ NW SE	..	..	..	..	20	200	75
	Yantes, B. F. Est	W½ SE	32	8	30	..	80	800	240

Same	E½ SW	..	..	..	..	80	650	240
Bales, J. L.	SW SW	..	..	..	..	40	400	150
Park, Dr. C. E.	SW SW	..	..	..	..	40	400	150
Clark, W. E.	E½ SE	..	..	..	..	80	400	150
Link, Alonzo	NE NE	19	8	31	..	40	400	200
Tex. F. S. Ry. Co	All W of K. C. S. NW NE	..	..	..	..	16	300	150
Same	A strip of land 200 ft. wide along K. C. S. Ry. NW NE	..	..	..	..	6	80	40
Sudduth, P. H.	E 18 A NW NE	..	..	..	..	18	200	100
Tex. F. S. Ry. Co	All W of K. C. S. R. in SW NE½	..	..	..	..	24	600	300
170 K. C. S. R. of W		..	..	..	..	5	100	50
Link, Alonzo	All of SW NE E of K. C. S. Ry.	19	8	31	..	11	110	50
Same	SE NE	..	..	..	..	40	400	240
K. C. S. Ry. Co. & T. & F. S. Ry. Co	W 935 ft. of SE¼ except 100 ft. R. of W. heretofore named	..	..	..	..	45.40	1600	960
Elmer, John	NE NE	20	8	31	..	40	200	150
Limbocker, H. C.	NW NE	..	..	..	..	40	300	250
Dees, Frank	E½ SE SW NE	..	..	..	..	5	50	50
Brown, E.	SW NE except E½ SE of SW NE	..	..	..	..	35	300	175
Elmer, John	N 78 rds. SE NE	..	..	..	..	39	200	150
Brandon, P. H.	S 3 rds. SE NE	..	..	..	..	2	10	10
Limbocker, H. C.	E½ NE NE NW	..	..	..	..	5	40	50
Smith, S. E. L.	N½ NW ex. E½ NE of NE NW	..	..	..	..	75	750	500
Enoch, E. C.	E¼ N½ SW NW	..	..	..	..	5	200	100
Bush, J. A. F.	SW NW ex. E¼ N½ SW NW	..	..	..	..	35	250	200
Dolphie, J. W.	W¼ S½ SE NW	..	..	..	..	5	60	75
Willmon, E. A.	E¾ S½ SE NW	..	..	..	..	15	120	100
Smith, S. E. L.	N¼ SE NW	..	..	..	..	10	100	75
Unknown	S½ N½ SE NW	..	..	..	..	10	100	50

Assessment Record Road Improvement—*Continued.*

	Name.	Subd. of land.	Sec.	Twp.	Rge.	Zone.	Acre.	Pres. val.	Corrected ben.
	Unknown	NE SW	..	..	..	..	40	800	500
	Hartley & Thomas	E¾ N½ NW SW	..	..	..	..	15	350	200
	Bush, J. F	W¼ N½ NW SW	..	..	..	..	5	30	25
	Harben, J. H	SW NW SW	..	..	..	..	10	550	500
	Unknown	SE NW SW	..	..	..	..	10	300	150
	Reese, D. D	SW SW SW	..	..	..	..	10	400	400
171	J. C. Shepard	W½ NW SW SW	..	..	..	..	5	250	125
	Brown, C. P. Est	E½NW SW SW	..	..	..	..	5	60	50
	Garrison, W. D. Est	N¾ E½ SW SW	..	..	..	..	15	200	150
	Unknown	S¼ E½ SE SW	..	..	..	..	5	100	50
	Fabert, Wm	SW SE SW	..	..	..	..	10	150	125
	Unknown	NW SE SW	..	..	..	..	10	50	175
	Brandon, P. H	E½ SE	..	..	..	..	80	300	200
	Dee, Frank	N½ NW SE	..	..	..	..	20	400	250
	Garrison, W. D	S½ NW SE	..	..	..	..	20	500	250
	Same	SW SE	..	..	..	..	40	400	300
	Elmer, John	NE	21	8	31	..	160	640	500
	Same	N½ NW	..	..	..	..	80	320	250
	Towson, H. C	SW NW	..	..	..	..	40	250	150
	Brown, Claud	SE NW	..	..	..	..	40	250	125
	Same	NE SW	..	..	..	..	40	250	125
	Pevy, F. M	W½ SW	..	..	..	..	80	300	250
	Goodwin, J. W	SE SW	..	..	..	..	40	200	125
	Franks, J. C	N½ SE	..	..	..	..	80	240	250
	Shaw, J. W	S½ SE	..	..	..	..	80	240	250

	Corporation.	Supposed mileage.	Pres. ass'd val.	Corrected and ass'd ben.
172	So. Western Telegraph Co	60	76.00	15
	De Queen Telephone Exchange	280	9,350	2,820
	De Queen & Eastern Rd. Main Track	15.84	79,299.00	24,000
	Side Track	3.17	6,340	2,220
	Buildings	.....	8,250	3,500
	Lockesburg Telephone Exchange	50	1,870	500
	Southwestern Bell Tel. Co	50	344	100
	Sevier County Gin Co. (Bldg.) Located on D. & E. R. R. of W. in De Queen, Ark	.....	750	270
	Mo. Lbr. Co. Bldg. located on C. W. P. S. Co. lands in De Queen, Ark.	.....	1,000	360
	D. C. Goff Co. Bldg. located on K. C. S. R. of W. in De Queen, Ark..	.....	500	180
	Texas Produce Co. Bldg. located K. C. S. R. of W. De Queen, Ark..	.....	1,500	540
	Waters Pierce Oil Co. Bldg. & Tanks located on K. C. S R. of W. in De Queen, Ark	.....	1,000	360
	Magnolia Oil Co. Bldg. & Tanks located D. & E. R. of W. in De Queen, Ark	.....	750	270
	Jas. L. Cannon Potato House Bldg. located D. & E. R. of W. in De Queen, Ark	.....	1,000	360
	Harris Gin Co. Bldg. located on D. & E. R. of W. in Lockesburg, Ark	.....	500	300
	Mrs. J. A. Lewis (Bldg. Gin) located on D. & E. R. of W. in Lockesburg, Ark	.....	750	450
	Farmers Union Warehouse Co. Bldg. located on D. & E. R. of W. in Lockesburg	.....	500	300
	T. W. Park Potato House Bldg. located on D. & E. R. of W. in Lockesburg	.....	1,000	600
	Prairie Pipe Line Co	2 miles	16,600	8,300

Assessment Record Road Improvement—*Continued.*

	Corporation.	Supposed mileage.	Pres. ass'd val.	Corrected and ass'd ben.	
173	Kansas City Southern Ry. Co. and Texarkana & Ft. Smith Ry. Co.—				
	Main Track	2 miles	54,000	7,000	
	Side Track	9¾ "	29,250	5,000	21,270
	Bldgs	.....	46,365	9,270	
	Pullman Co.	2.52 "	756	454	
	Western Union Telegraph Co.	2.52 "	872	525	
	American Railway Express Co.	3.43 "	686	418	
	Total Benefits			$510,033	

174 STATE OF ARKANSAS,
County of Sevier:

We, R. Steel, Jacob Brown, and W. C. Grady, assessors appointed by the Court of Sevier County, Ark. to assess the benefits on the real property situated in the road improvement district No. 3 Sevier Co. Ark., do hereby certify that we have correctly entered on the within book all the lands embraced within said district in convenient subdivisions as surveyed by the U. S. and appearing upon the assessor's books of Sevier County, Ark. for the year of 1919, and the assessor's books now in use, in appropriate columns showing the names of owners, subdivision of land, number of acres, present assessed value, assessed benefits per acre, assessed benefits to each tract and the railroad, side tracks, buildings and light and Power Co., Telegraph and Telephone lines, Express companies, Pullman Co. and buildings on right of ways of K. C. S. and D. & E. railroads by entering the name of owners, mileage, in said districts, present assessed value of said railroads, side tracks, right of way, road beds, telephone and telegraph lines and Power Co., Pullman Co. and Express Co. and other improvements on same along said railroads and amount of benefits per miles and total amount of benefits of sail railroads, side tracks, buildings, buildings on right of ways of K. C. S. and D. & E. Railroads lying and being situated in said District No. 3, showing the number of miles of same, name of owners, present assessed value, benefits per mile and benefits of light and power company, telegraph and telephone lines, express company, Pullman Company buildings in said district and have assessed the damages to lands along said road
175 to all parties claiming same.

Given under our hands this 15th day of October, 1919. R. Steel, Jacob Brown, W. C. Grady, Assessors Road Improvement District No. 3, Sevier County, Ark.

Filed this the 15th day of Oct. 1919. W. H. Wardlaw, Clerk.

176 Q. Mr. Brown, I want to ask you another question to see if I understand your method of arriving at the assessments. Suppose the commissioners had advised you that the road—the improvement—would cost a million dollars instead of five hundred thousand; in that event, following your plan, you would have assessed benefits double to what you did assess, would you?

A. Yes sir.

Q. Then your assessments depended upon the cost of the improvement as given you by the commissioners?

A. Yes sir.

Mr. Edwards: We object to that as being incompetent, irrelevant and immaterial for any purpose under the rulings of the Court; it also raises a hypothetical question.

Mr. McDonough: I am trying to get at the basis of their assessment.

Mr. Edwards: We want to save the point.

Court: It is being tried before the Court, and the Court will overrule it. I will pass on those matters.

Q. Did you make the assessment against all the other property before you made the assessment against the railroad property?

A. Yes, I think we did.

Q. At the time of making the assessment against the railroad property, what did you have before you as a basis for making your assessment?

A. On the railroad property?

Q. Yes.

A. Well, I had the information that I had gotten about
177 the assessments in other road improvement districts of the assessments that had been placed on the real estate.

Q. In this county?

A. Yes, sir.

Q. And in other counties?

A. Yes sir.

Q. Little River County?

A. Little River County.

Q. That referred to Road Improvement District Number 6 of Little River County?

A. That referred to Road Improvement District Number 1 in Little River County.

Q. Now, what other information, if any, did you have? What I want to ask you is this, to try to make my question clearer, what information did you have, if any, with reference to the value of the railroad property within the district, and as to any advancement in that value by reason of the construction of the road?

A. We had the assessed valuation of the railroad as returned by the tax commission.

Q. Do you remember what that was?

A. Yes, twenty-seven thousand dollars a mile.

Q. And there were two miles of the main line of the road in the district?

A. Yes sir.

Q. What else did you have, if anything else?

A. We had the valuation of the side-tracks and buildings; two miles of main line and nine and three quarters miles of side
178 tracks and the buildings.

Q. You got that from the tax commission as considering the side-tracks?

A. Yes sir.

Q. You considered the side-tracks as separate from the main line?

A. Yes sir.

Q. Do you remember what you assessed on the main line?

A. Thirty-five hundred dollars.

Q. On the side tracks?

A. Five hundred dollars a mile.

Q. How much on the buildings?

A. About nine thousand.

Q. Those were buildings used in the operation of the railroad?
A. I presume so.
Q. What buildings were they?
A. Of course specifically I couldn't tell, but I take it for granted the depot and roundhouse—the general buildings they have here.
Q. The depot and roundhouse are buildings that are actually used in the operation of the entire road, aren't they?
A. Yes sir.
Q. How did you arrive at the conclusion that there would be any benefit to the railroad property?
A. The same way we arrived at any benefits on any other property in the district. It is all indirect.

Q. What do you mean by that?

179 A. I don't think there is any direct benefit to any certain piece of property in the improvement.

Q. How could there be an indirect benefit, in your opinion, to the railroad property from this highway?
A. The same as it would be on a piece of property of mine.
Q. Give your reasons.
A. I am going to give my reasons.
Q. All right.
A. Because as the country would improve I would get some benefits from my property, and I believe it will reflect on the railroad property to some extent the same way.
Q. You have no property, as I understand you, in the district. How can you get a benefit from the construction of the highway?
A. I use that as an example; I have property in other districts.
Q. I want to confine the examination to this district. Now, using that as an illustration, having one piece of property in the district not used for railroad purposes, it is your opinion it is a general community benefit?
A. Yes sir.
Q. And that general community benefit, in your opinion, will come to that non-railroad property?
A. Yes sir.
Q. Now, how can a general community benefit come to the railroad property?
A. Well, by reason of the railroad being part of that community, I should think.

180 Q. Explain what you mean by that.

A. A railroad is certainly interested in that community to some extent; I would take it that way.
Q. How does a railroad earn its money?
A. By going from these different community districts.
Q. How would you estimate there was any increase in the value of railroad property in this district?
A. Only as I would contemplate that there would be an increase in other property. I believe it would be impossible to say whether any property would be directly benefited in the district.
Q. Are you able to say that the railroad property in the district would be increased in value?

A. Only generally as other property is increased.

Q. You know nothing personally, do you, about the value of the railroad property within the district?

A. Only from the assessment records.

Q. I mean from your personal knowledge.

A. No sir.

Q. You have had no such experience as would enable you to give any accurate view of the value of railroad property for railroad purposes?

A. No sir.

Q. Your total assessments against this railroad property amounted to something over twenty-one thousand dollars, did it not?

A. Yes sir.

Q. Then your assessments amounted to over twenty-one thousand dollars substantially against two miles of railroad, didn't it, which included the buildings—the roundhouse and other buildings—used by the railroad for railroad purposes, and also included the

181 sidetracks?

A. Yes, that covers it all.

Q. It amounted, then, taking into consideration all those items, to something in excess of ten thousand dollars a mile?

A. If you group it, it wou-d; if you group it all into two miles, it would.

Court: That is a conclusion about grouping it. He has given what he assessed on the main line and on the side tracks and buildings. What the conclusion of that would be is a matter before the court.

Q. As I understand you, you did not, yourself, form an opinion or independent judgment of the actual value of the railroad property within the district?

A. No sir.

Q. You have had no experience and no sufficient information that would enable you to state on your own information as to what that property was worth?

A. No sir.

Q. Then, is it not true, or is it true, that the estimate of benefits which you made was more or less conjectural and speculative?

A. Not altogether.

Q. In what respect was it speculative and conjectural and in what respect was it not speculative and conjectural?

A. It was not because I had two other districts to go by in the county, one of which the K. C. S. had by agreement accepted a certain assessment.

Q. Five hundred dollars a mile, wasn't it?

A. I am talking about Improvement District Number 1.

182 You agreed 20 per cent of the benefits of that district.

Q. No, I don't agree with you about that. That is opening the contest right now.

Court: Let this witness testify his understanding about it.

A. As an assessment of District Number 1. I understand you used only 20 per cent in that district and with only 45 per cent of that valuation of this district and this district with a 11 per cent valuation we only gave you a benefit of 33½ per cent.

Q. You only assumed when you found District Number 1, in which the Kansas City Southern had been assessed 20 per cent of the cost of the improvement, that would justify you, regardless of what the actual increased value was here of making the assessment which you did here?

A. That would be one of the points we used. We also used your assessment in District 2, which was lower than we made on this.

Q. Did you ascertain in District number 1, which you say influenced you, in Little River County——

A. No, that is Sevier County I am talking about.

Q. About five hundred dollars a mile?

A. No, about the benefits of Improvement District Number 1.

Q. That was an adjustment by compromise, wasn't it, to avoid litigation?

A. In Federal court.

Q. It was an adjustment by compromise to avoid litigation, wasn't it?

A. I couldn't say about that.

Q. There was litigation over it?

A. Yes sir.

Q. And to avoid litigation a settlement was agreed to, was
183 it not?

A. Yes, I think that is the way it was.

Q. And you used that information in the absence of any information of your own, didn't you?

A. Well, I don't know what you would call information of my own. The only information of my own would be what I could find.

Q. By hearsay?

A. Yes sir.

Q. And not your original information?

A. No.

Q. If the other information you based yours on should be wrong, yours would be wrong here, wouldn't it?

A. Not necessarily.

Q. Why?

A. Because we didn't make it as much.

Q. How much did you make it here?

A. We made it considerably less than that percentage.

Q. You investigated Road Improvement District Number One's assessment in Sevier County?

A. Yes sir.

Q. And you were informed either from the records or otherwise that the railroad company was being assessed twenty per cent of the cost of the improvement in that district?

A. Yes sir.

Q. Without any knowledge then, as to whether that was just or

more than it ought to be, you adopted that as a guide, or as one of the guides?

A. As one of the guides.

184 Q. In that respect isn't it true you made that assessment upon what was done elsewhere and not upon any increased value of railroad property in District 3, the one now under investigation?

A. No, not altogether, I didn't; I said from the fact that the property would be benefited.

Q. Do you mean by 'benefited' increased in value?

A. Probably not increased in value but probably increased in earning capacity, which would increase the value.

Q. In your opinion is the property of this district by the construction of this highway worth anymore on the market, or have you an opinion that would enable you to say, that it would be worth any more on the market with this improvement than without it?

A. Only in a comparative way. If other property is worth any more I would say the railroad property would be worth more.

Q. Then you based your assessment as based on that answer against the railroad company by reason of the general benefit which you have heretofore described and on the belief that other property would be benefited generally?

A. Yes sir.

Q. And if you felt other property would be benefited generally then railroad property would be benefited?

A. Yes sir.

Q. And do you mean other property would be increased in value or do you mean an indefinite, general community benefit?

A. A general community benefit is what I would describe it.

Q. You didn't consider, then, that the property would be increased in value?

A. Well, a general community benefit would increase property in value.

185 Q. Would it increase property in value to the extent of the assessment?

A. I think it would.

Q. Was it your basis for a judgment or your judgment that the entire property in this road district would be increased in value a half million dollars by the construction of this road?

A. Yes, sir, in twenty years I think it would be.

Q. Not in twenty years; now, I am talking about.

A. These benefits extend over twenty years.

Q. If it extends over twenty years there is a general development that comes irrespective of the road construction, isn't there?

A. I think so, but more so with the road construction.

Q. Hasn't there been a general development in the communities in this part of the State where there are no hard surfaced roads?

A. There has been more, though, since we got the hard surfaced roads in this county.

Q. You mean in this town?

A. Yes, in this town.

Q. There are a good many hard surfaced roads now in this county, are there not?

A. Yes sir.

Q. Do you know the amount being spent in the county for the construction of hard surfaced roads?

A. No sir.

Q. Is your judgment for benefits or assessments based on the probable rise in the value of the property covering a period of twenty years?

A. Yes sir.

186 Q. Is that the basis of it?

A. No sir.

Q. Does it cover a rise at the present time?

A. It covers what we believe to be an annual benefit, which is about twenty-seven thousand dollars a year.

Q. You mean an increase in value that way?

A. I don't know whether you call it increase in value.

Q. Isn't it true that a levy of an assessment of that kind decreases the market value of the land because of the heavy taxes due to the assessment?

A. Not to my knowledge.

Q. Mr. Brown, who were the other assessors?

A. W. C. Grady and Rupert Steel.

Q. Are they here?

A. Yes sir.

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Cross-examination.

By Mr. Edwards:

Q. How many assessment districts have you been an assessor in?

A. Three.

Q. Have you had any other experience in assessing the real property in this county?

A. I have served on the Equalization Board a few times.

Q. Were you one of the assessors in Road Improvement District Number 1 of Sevier County?

A. Yes sir.

Q. What has been your observation with reference to the increase or decrease in the value of the lands within that dis-

187 trict, and particularly here in De Queen, after those improvements were completed? Have the valuations here in and about De Queen, and the land values in and about that district, been increased or decreased by reason of that improvement?

A. My opinion is that they have been increased.

Q. Now, with reference to the improvements made by Road Improvement District Number 3, and the other improved roads built into this section here and about De Queen, state whether or not, in your opinion, the value has been enhanced by each of those improvements.

A. My opinion is that they have.

Q. Now, in making your assessment of property in Improvement District Number 3, did you consider that as an element in arriving at the benefit?

A. Yes, to some extent.

Q. Now, I believe you stated on direct examination by Mr. McDonough that you used as a basis for your assessments the assessed valuation of the property as assessed for State and County purposes?

A. I did.

Q. And that you laid the district off into zones, the first mile in zone one, and from one mile to two miles in zone two, and the other zone three?

A. Yes sir.

Q. And you had a uniform rate for each separate zone, as you stated a minute ago?

A. Yes sir.

Q. Sixty per cent of the assessed valuation in the first zone, fifty per cent in the second zone, and forty per cent in the third zone. Is that correct?

188 A. Yes, I think so.

Q. And that in fixing the benefits or assessments against the non-railroad property, that is, the lands and town lots, you accepted that assessed valuation as to that, except where you knew a building had been erected since the assessment had been made?

A. Generally so, yes sir.

Q. You understood that, and as a matter of fact the County assessments for State and general purposes does include, in fixing the value, the improvements upon the land, does it not?

A. Yes sir.

Q. State to the Court what is the total assessed valuation of the Kansas City Southern Railroad and Texarkana & Fort Smith railroad companies in this district as taken from the returns made by the State Tax Commission, which, you say, you have before you.

Mr. McDonough: That speaks for itself. The way to prove it would be to get the return.

Court: That is the best evidence of it. If he has that he can state what it is.

Mr. McDonough: It is in the County Clerk's office.

Court: Better bring it up here then.

Mr. McDonough: I am willing for you to offer it at this time and consider it in evidence. See proceedings supra, following page 6.

Court: All right.

Q. State to the Court what that assessed valuation was.

A. $129,615.00.

Q. Now, state to the Court what the total assessed benefits against that valuation amounts to.

189 A. $21,270.00.

Q. Now, what rate, if you made the calculation, does the benefits bear to the assessed valuation of the railway property?

A. About sixteen per cent.

Q. The benefits assessed against that valuation is at the rate of sixteen and a quarter per cent of its assessed value. Now then, state to the Court what is the total assessed value of all the acreage property and town lots in the district.

A. $897,660.00.

Q. Now, state to the Court the total assessed benefits on that acreage property and town lots.

Mr. McDonough: Isn't that shown by the evidence already in?

Mr. Edwards: It is shown here in the record, but I just want to bring it out.

Mr. McDonough: All right.

A. About $488,000.00.

Q. Now then, have you made the calculation to see what rate that assessment of benefits bears to the assessed valuations of all that acreage property and town lots?

A. About 48 per cent.

Q. Have you that calculation, or are you estimating it?

A. I have got it.

Q. I will ask you to make that calculation again. I will ask you if it isn't the rate on all the property, including public service corporations?

A. Yes sir.

Q. For the purpose of refreshing your memory I will ask you if the rate isn't 54 and a half per cent.

A. Exclusive of the public service corporations.

190 Q. In other words, the total assessed benefits upon the lands—acreage property and town lots—is $488,354, which is 54 and a half per cent of the assessed valuation of that property?

A. Yes sir.

Q. Are there any other railroads in this improvement district, Mr. Brown?

A. Yes sir.

Q. State to the court what other railroad besides the Kansas City Southern and Texarkana & Fort Smith Railway Company.

A. The De Queen & Eastern.

Q. State to the Court, if you know, what the total assessed valuation of the De Queen & Eastern railroad property is embraced in the district.

A. $93,790.00.

Q. And the total assessed benefits on that property?

A. $29,720.00.

Q. Now, what rates do the benefits bear to the total valuation of the property?

A. 31½ per cent.

Q. Do you remember how many miles of pipe line were embraced in this improvement district?

A. Two miles.

Q. Do you know what the assessed valuation of that two miles was?

A. $4300.00 a mile.

Q. Possibly it will be better to let you refresh your memory from the record if you haven't made that calculation, Mr. Brown. Now, I will ask you to look at the assessment records made by the Board of Assessors and state what the total value of that pipe line
191 was, that is, for State and County purposes.

A. $8,300.00 a mile.

Q. Now, for the two miles it would be $16,600.00?

A. Yes sir.

Q. What did you assess that property per mile?

A. $4150.00.

Q. Making a total assessed benefits of how much on the two miles of pipe line?

A. $8300.00.

Q. Then in making your assessments you assessed the pipe line there at $4150.00 per mile, and you have only assessed the Kansas City Southern and the Texarkana & Ft. Smith Railway Company at $3500.00 a mile? Is that correct?

A. Yes sir.

Q. I will ask you to look at your assessment records and state to the court the valuation of the property owned by the Western Union Telegraph Company within this improvement district.

A. $872.00.

Q. State the total assessed benefits as against that property.

A. $525.00.

Q. That, then, is at the rate of sixty per cent of its assessed valuation, is it not?

A. Yes sir.

Q. I will ask you if you have assessed the different buildings on leased property along the railroad right-of-way.

A. Yes sir.

Q. State to the court what buildings, or some of them.

192 A. We assessed all the gins and the oil companies and all the wholesale houses that were on leases grounds.

Q. What property in the improvement district is assessed at the lowest rate in proportion to its assessed valuation?

A. The K. C. S. railroad.

Q. And the Texarkana & Fort Smith Railroad?

A. Yes sir.

Q. And their rate, I believe you stated, was 16¼ per cent?

A. Yes sir.

Q. Now, what is the next lowest rate applied to property embraced within the district?

A. De Queen & Eastern.

Q. What was that rate?

A. Thirty-one and a half per cent.

Q. State to the court whether or not you assessed the railway companies' property in proportion to the benefits you considered they received higher or lower than the other property embraced in the district.

A. Well, we aimed to assess them on a basis according in our opinion that benefits were received.

Q. Do you consider the benefits you have assessed here against property of the Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company a just, fair and equitable assessment of the benefits received by this railway company by reason of this improvement?

A. I do.

Q. Now, did you make any discrimination, or assess their property any higher than you did that of the other property of the district by reason of the fact that they were a railroad company?

193 A. No sir.

Redirect examination:

Q. Mr. Brown, in making an assessment of $21,270.00 did you consider the increase in the traffic which the railroad company would receive by reason of the construction of the road as the basis of your benefit?

A. No sir, not as a basis.

Q. Then, your so-called benefit is based upon what you stated before, a general community benefit?

A. Yes sir.

Q. If these railroads should be benefited in the two miles involved in this district to the extent of $21,270.00, did you figure what the road would be worth if there was a similar highway built on every two miles of it from one end to the other?

A No sir.

Q. If you were to add ten thousand dollars a mile to the value of the railroad it would be a considerable increase in the entire value, would it not?

A. Yes sir.

Q. Do you know the length of this railroad?

A. I think about 780 miles.

Q. Then, as I understand you. in estimating the benefits you did not consider any increased quantity of farm products as affecting your estimate of benefits?

A. Of course I would have to in a general community benefit; if the road produced a general community benefit I would naturally come to the conclusion that it was through increased products to a great extent.

194 Mr. Edwards: We want to object to this line of interrogation because the court has ruled already that the only evidence admissible here is some evidence showing that the railroad company's property has been discriminated against, and has been confiscated. Now, we insist that the questions be confined to that proposition of discrimination against and confiscation of their property; not the business of the company but the particular property here in the county that has been assessed in this improvement district.

Court: That is true, but the court is going to give a very wide range of investigation of that matter.

Mr. Edwards: Save our exceptions.

Q. You did, then, include the matter of the estimate of increased traffic to be enjoyed by the railroad, due to the construction of the highway?

A. If the district enjoyed it, yes.

Q. You based that, then, upon the probability that in the future the district might enjoy a general benefit, and if the district enjoyed a general benefit, then you estimated that the railroad in that event would get increased traffic? Is that right?

A. I don't get your question.

Court: Read it to him.

A. I don't think our instructions in assessing tell us anything about the future benefits.

Q. Who gave you the instructions?

A. It is in the statute there.

Q. In what?

A. In the Alexander Road Law.

Q. Do you understand the Alexander Road Law to fix any system of benefits?

195 A. No sir.

Q. In referring to instructions did you refer to instructions given you by the Commission or to your construction of the statute?

A. I relied on the construction of the statute given by the attorneys.

Q. Is the entire City of De Queen included in this road improvement district?

A. No sir.

Q. How much of it is included and how much of it is excluded?

A. I should judge half of it is included. It comes to this street down here and takes the east half of section 19 and east half of section 31.

Q. Did you assess any benefits against the property in De Queen which is not in the district?

A. No sir.

Q. Isn't it true, in your opinion, that the property in De Queen not in the district will receive as much benefit as that property in De Queen which is in the district?

Mr. Edwards: That is objected to as incompetent and immaterial.

Court: Yes, that is immaterial.

Mr. McDonough: I want to suggest to the Court this as a basis for the question, that it does raise the question of whether there is a discrimination. For illustration, suppose one block in the town of De Queen was assessed and nine-tenths or ninety-nine hundredths of the town are left out, and suppose that the railroad property is located in the town of De Queen. Therefore, if only one-half of De Queen is included in the district that half of De Queen is relieved from the burden and that burden is placed upon the railroad

196 company in particular. That is a fact that enters into the consideration of whether these assessments are discriminatory. The Court has held the power is in the legislature and there must be a lack of discrimination. If we have an assessment against the town

of De Queen and a larger part of it is excluded that increases the burden in a confiscatory way upon the railroad company. Hence, I think it is admissible to show by this witness that the property within De Queen is all benefited as much as that which is in the district.

Court: We are only inquiring now about this district, whether it is discriminatory in this district.

Mr. McDonough: I want to make up the record. I save an exception to the ruling of the Court.

To the ruling of the Court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Court: Let him state his answer, but of course it is excluded, but he can state it so as to get it in the record.

Q. Answer the question. Do you understand it, Mr. Brown?

A. Yes, the property in De Queen virtually pays the tax on the western extension of that same road right on through.

Q. Constructed by another district?

A. Constructed by another district.

Q. That doesn't quite get to the question. The question is whether or not the property in De Queen, and not in the district, was not benefited in a similar way to the property that is in De Queen and in the district.

Court: I think he has answered that because he said it was
197 for the benefit of other roads in connection with this going on through.

Mr. McDonough: The trouble about that is that goes into a benefit which is in another district; it is not involved in controversy here. In determination of the question of discriminatory assessments in this district we cannot, as I view it, — into consideration.

Court: If that question had stated, "Suppose there had been no other roads going out of De Queen," that might have been answered that way, but where it connects up other roads going through the town of De Queen and De Queen is paying the taxes on that other road, I don't see how it would affect this road.

Mr. McDonough: Here is the town of De Queen, half of it out of the district and half of it in the district. It looks to me sound to say that the whole of De Queen is benefited by any other road if any of it is benefited.

Mr. Edwards: To stop the argument we are willing to admit that it is.

Mr. McDonough: The admission is, as I understand from counsel, that all the property in the town of De Queen is benefited, if any is benefited, by the construction of the road?

Mr. Edwards: Yes.

Mr. McDonough: Well, there is no necessity to pursue that any further.

Q. Mr. Brown, in your testimony you spoke of certain assessments against the Western Union Telegraph Company and the De Queen

& Eastern and the pipe line. Are those assessments that were made by you and the other assessors in the assessment you made or
198 do they cover or refer to the assessment since the first?

A. They refer to the first assessment; that is the only assessment we made.

Q. Do you know whether or not the assessment of the De Queen & Eastern has been reduced from the amount which you affixed to it, twenty-nine thousand dollars down to fifteen thousand dollars?

A. I know it has not.

Q. How do you know?

A. Because I know there was never any agreement to that effect by the county court, or otherwise; I know that agreement on there was agreed to by C. C. Ray, general freight and passenger agent of the D. & E. and Mr. Leper—I forget what position he holds. I know they agreed to that, and that reduction marked on that book is admitted to be an error by the county clerk, and I understand since that the D. & E. has paid that tax as originally assessed.

Q. The record does show a reduction from twenty-nine thousand to fifteen thousand dollars?

Mr. Edwards: The record speaks for itself and it is here in the court room, and we object to any statement from Mr. Brown as to what it shows.

Q. I will ask you to turn to the record and show where that appears that you mentioned.

Mr. Edwards: I object to that unless he shows all.

Mr. McDonough: I can't show but one thing at a time. I will show it all if you will just give me time.

Q. Now, Mr. Brown, on this assessment record there does appear this in figures, "$15,000.00 as against the D. & E., by agreement February 5th, 1920." That appears there, does it not?

A. Yes sir.

199 Q. Then below there appears this, "Above entry showing assessment of D. & E. Railroad Company being reduced to $15,000.00 is erroneous, and was made on this record without our knowledge or consent. This 8th day of August, 1921. Jacob Brown, W. B. Grady, and R. Steel." That appears on the record there?

A. Yes sir.

Q. Did you sign your name there?

A. Yes sir.

Q. Did Mr. Grady?

A. I couldn't say.

Q. Did Mr. Steel sign his name there?

A. I suppose so; I didn't.

Q. Was your assessors' board in session on the 8th day of August, 1921?

A. Yes, Mr. Edwards called us together.

Q. That was along after the present appeal was prosecuted?

A. There was no appeal.

Q. I mean the appeal of the Kansas City Southern?
A. Oh, yes.
Q. The De Queen & Eastern appears there assessed at what figure per mile, if you can tell?
A. The benefits are assessed at $1,515.15 per mile.
Q. The amount of mileage of the De Queen & Eastern Railroad is what?
A. Fifteen and eighty-four hundredths.
Q. How much is the side track?
A. Three and seventeen hundredths miles.

Q. There appears the figures "79,200." What does that
200 represent?

A. That is the assessed valuation, as given by the commissioners.
Q. Of the entire fifteen and eighty-four hundredths on the De Queen & Eastern?
A. Yes sir.
Q. The De Queen & Eastern has buildings here in De Queen, has it?
A. Yes sir.
Q. This fifteen and eighty-four hundredths miles of that line is the amount of that line in this improvement district, isn't it?
A. Yes sir.
Q. Were you present when the fifteen thousand dollar item was placed on this book?
A. No sir.
Q. Do you know of your own knowledge whose handwriting it is?
A. No sir.

Recross-examination:

Q. In what direction does the De Queen & Eastern railroad run from De Queen?
A. In an easterly direction.
Q. And in what direction does the road or highway improved by Improvement District Number 3 run?
A. An easterly direction.
Q. How far does it run east?
A. Seventeen or eighteen miles.
Q. Which way does the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company run here in De Queen?
A. North and south generally.

Q. Then the road improved in this district intersects the
201 Kansas City Southern railroad property at right angles, does it not?

A. Approximately, yes sir.
Q. I will ask you to state, if you know, whether or not the De Queen & Eastern railroad and the highway, Road Improvement

District Number 3, are feeders and bring traffic to the Kansas City Southern railroad.

A. I know the De Queen & Eastern is.

Q. State whether or not you consider the highway which is embraced in Improvement District Number 3 of Sevier County a feeder for the Kansas City Southern.

A. Yes sir.

Q. Are you familiar with the nature of the county and products east of here about Lockesburg and in the west side of Howard County?

A. Yes, generally.

Q. In which direction is that traffic carried, and what railroad companies handle it?

A. The De Queen & Eastern handle part of it.

Q. How far does the De Queen and Eastern carry it?

A. About twelve miles.

Q. To what point?

A. De Queen.

Q. What railroad company receives that traffic after it reaches De Queen?

A. The K. C. S., I suppose; the T. O. & E. may get some of it now.

Q. You mentioned a minute ago on examination by Mr. McDonough that this district runs from this street just west of the court house?

202 A. Yes, I said this one, but I waved the wrong hand; I meant this one (indicating).

Q. You mentioned there was another district beginning right where that line terminates. Is that a fact?

A. Yes sir.

Q. State to the court the number of that district or what name it goes under.

A. Number 4.

Q. Road District Number 4 of Sevier County?

A. Yes sir.

Q. Are you an assessor of that district?

A. Yes sir.

Q. State to the Court whether or not all the property, that is, the other half or the west half of De Queen not embraced in Number 3 is embraced in Number 4.

A. Yes sir.

Q. State whether or not any railroad property is assessed in Improvement District Number 4 that is owned by the Kansas City Southern and the Texarkana & Fort Smith Railroad Company.

A. No sir.

Q. State in your opinion whether or not the railroad company's property here in De Queen, the property as assessed in Number 3, is benefited by the improvement made by Number 4.

A. Yes sir, indirectly the same as in District Number 3.

Q. Then the road improved by Number 3 runs due east from the termination of the road built or embraced by Number 4, does it not?

A. Yes sir, they meet here in De Queen.
Q. In other words, the two highways do?
A. Yes sir.
Q. State whether or not to your knowledge the Kansas City Southern handles freight and traffic that is grown and distributed along the route of these two highways.
A. Yes, I know they do.

Re-direct examination:

Q. Mr. Brown, the De Queen & Eastern and the Number 3 road close together all the way to Lockesburg, aren't they?
A. Yes, they parallel each other.
Q. There are plenty of stations to take care of the traffic that may be grown along that line of road, are there?

Mr. Edwards: That calls for a conclusion, and we object to it.
Court: Let him state what stations are between here and there.
Mr. McDonough: I am cross-examining him on the testimony which they have just brought out for the first time.
Court: I understand that, but on cross-examination you are no more entitled to conclusions than you are on direct examination, but you can ask him as to facts.
Mr. McDonough: I am asking him as to facts.

To the ruling of the Court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Are there any stations on the De Queen & Eastern railroad?
A. Yes sir.
Q. And people that patronize that road between here and Lockesburg use these stations?
A. They have used them.
Q. You spoke of the traffic, in your opinion, which is your conclusion about the matter, that the traffic on either side of where this road is being built will after the road is built be brought to De Queen and not given to the De Queen & Eastern?
A. To some extent it will be. I have loaded peanuts in Geneva, and there was a man here yesterday said if they had peabuts to sell they would rather bring them to De Queen and load them than load them at Geneva.
Q. Do not a part of the farm products grown in this district along the proposed line of this highway go to Lockesburg and other stations on the De Queen Q Eastern east of the Cosatot river?
A. Yes, I amy sure they do.
Q. The De Queen & Eastern has connection with what railroad to the east, if any?
A. None.
Q. None at all?
A. No sir.

Q. Is there a line of railroad built by the De Queen & Eastern westward into Oklahoma?

A. Yes sir.

Q. Is that line of railroad in the other District 4 that you mentioned?

A. Yes, part of it is.

Q. It runs generally in the direction that Number 4 highway runs, does it?

A. It doesn't run as close. The railroad bends off right around there and the highway runs this way. After they leave here they probably get three miles apart.

Q. Isn't it true that the country in Road District Number 3 that is subject to cultivation is practically all developed already?

205 A. Oh, no, I couldn't say that.

Q. Have you figured it out to find out what is in cultivation and what is not? Have you made any estimate of it?

A. No sir.

Q. In making the statement which you have just now made to counsel on the other side that products will be brought over the road in District Number 4 to the Kansas City Southern, you are basing that opinion upon the same general conclusion that you have given with reference to products grown in Road District Number 3?

A. No, I base that about hauling stuff here on the definite knowledge that I know they do bring it here.

Q. The road is not constructed in Number 4, is it?

A. Not entirely, so sir.

Q. Then, they are bringing it here before the road is constructed?

A. Yes, some of it.

Q. Then the railroad is getting the benefit of it?

A. Some of it is a pretty good thing.

Q. The railroad is getting the benefit of it without having the construction of the highway?

A. I don't think his question was specifically about Road Number 3.

Re-cross examination.

Q. You spoke of the railroad connections west of De Queen. When was that connection made? When was the Texas & Oklahoma built into De Queen?

A. Last spring some time.

Q. When did you make this assessment?

206 A. About two years or more.

Q. Then at that time the only connecting railroad De Queen had was the Kansas City Southern and the Texarkana & Fort Smith railroad, was it not?

A. Yes sir.

Questions by the Court:

Q. Is there any surface road connecting the De Queen & Eastern except at Lockesburg and this place—any depot?

A. Any what?

Q. Any surface road connecting the De Queen & Eastern with mber 3 except at Lockesburg?
A. No sir.
Q. There is no gravel road from Geneva to this road anywhere, here?
A. No sir, not that I know of.
Q. How far is it from where this road crosses opposite Geneva er to Geneva?
A. I don't know how far it is.
Q. Have you ever traveled through that country?
A. Yes, I have traveled through it, but not lately.
Q. What is the character of the road leading from Number 3 er to Geneva?
A. When I went through there they were impassable.
Q. What is the character of the country from here to the eastern e of this road, that is, what are the principal products being grown ere now, that is, pretending to grow or talking about growing that in contemplation since this road has been built there? Is it truck growing?
A. Corn and cotton and truck growing has been developed to a very great extent.
Q. In this road, that is, the body on to the eastern boundary, hat is your opinion about where that truck will be delivered, hether or not on the De Queen & Eastern or come over this hard rface road to De Queen?
A. I judge it would be divided a great deal; the most of it, ough, would be in carload lots over the De Queen & Eastern.
Q. If Road Number 3 is completed, then what, in your opinion, ould be the amount of truck from Lockesburg this way or from e other side of Lockesburg this way?
A. In my opinion there would be a big amount of it brought to e Queen on trucks and shipped by express.
Q. Do you think that would be a benefit to the railroad?
A. I think so.
Q. Do you think a road running out into the country eighteen iles from a station would increase the traffic on that road in truck nd farm products?
A. Yes, I believe good roads will increase the production of perishble goods because it has been nearly impossible even to haul eaches any distance in this country without a good deal of deerioration on account of the rough roads.
Q. The eastern end of the road doesn't connect up with any surfaced road, does it, at the county line?
A. I think not.
Q. How far is it, then, across, and the character of the road, rom its terminus to Nashville, another railroad?
A. I judge about fifteen miles to Nashville.

208 Redirect examination:

Q. Mr. Brown, isn't it true that you cannot haul perishable fruits a very long distance over any kind of roads without endangering their value, either good or bad roads?

A. No, you couldn't haul they very far; an hour's haul or such a matter would be about all a person would want to haul them.

Q. Then in the development of the country there must be railroad stations near the point of growth of the perishable fruits and products? Isn't that true?

A. Yes sir.

Q. Otherwise, the products, when you put them on trucks and haul them three or four hours are injured, aren't they, by the haul before you get to the railroad?

A. Yes sir, they should be put under refrigeration as soon as they could.

Recross-examination:

Q. State whether or not in your opinion the building of improved highways has encouraged and induced the truck industry in those sections where the roads have been improved.

A. I think it has.

Q. When the hard surfaced road in this district has been completed, state whether or not the truck and fruit and other perishable products could be hauled even from the extreme eastern end of the road here to De Queen without endangering the products a distance of some eighteen miles.

A. I should think it could.

Q. That distance could be made in the course of an hour, you think?

A. It could be made in the course of an hour and a half.

Witness excused.

209 E. PHELPS, called by the Plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. Your name is E. Phelps?

A. Yes sir.

Q. State what position you hold, if any, with the Kansas City Southern Railroad Company.

A. Tax Commissioner.

Q. How long have you been with the Kansas City Southern Railway Company?

A. About 27 years altogether.

Q. How long have you been engaged in railroad work?

A. About 30 years.

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Q. How long have you been the tax commissioner of the Kansas City Southern Railway Company?

A. A little over five years.

Q. State whether or not as tax commissioner you have given any special study to the matter of benefits to accrue or supposed to accrue to railroad property by reason of the construction of highways.

A. Yes, I have given that subject special study.

Q. I wish you would state to what extent you have investigated that matter, covering what period of time, first.

A. Well, I have been concerned in the investigation of that subject for something over five years.

Q. Did you investigate the matter with reference to Road Improvement District Number 6 of Little River County?

A. Yes sir.

210 Q. Have you been called as a witness in other highway road improvement districts?

A. I believe that is the only case that we have reached a trial of so far; I have been called as a witness in several other cases that have as yet not come to trial.

Q. You were connected with a drainage case?

A. Yes sir.

Q. You studied the subject of benefits and testified, did you not?

A. Yes, I will amend my answer that I have testified in the case of the K. C. S. against the Little River Drainage District.

Q. Under your employment and under your duties with this railroad company, state whether or not it is a part of your business and duty to make a study of this question of benefits to railroad property by road improvement districts.

A. It is.

Q. Are you familiar with the location of Road Improvement District Number 3, the one in controversy?

A. Yes, in a general way I am.

Q. I hand you a map marked map of Sevier County, Arkansas, and ask you if that fairly represents this road district, including the location of De Queen.

A. Yes, the territory included within the red lines is a representation of Road Improvement District Number 3.

Mr. McDonough: We offer that in testimony.

Mr. Edwards: It is objected to, if the Court please, because the plat does not show the road that is being improved, it only shows the boundaries of the district. It is not a complete map for that purpose, and we make that objection to it.

(Here follows map marked side folio page 210½.)

211 Mr. McDonough: It is only introduced for the purpose of showing the relative location of the district. The road's location we will show a little later.

Court: Very well, let it go.

Mr. Edwards: Save exceptions.

Map referred to is here introduced, marked Exhibit A to the testimony of the witness, Phelps, and is attached hereto. See map preceding this page.

Q. On this map there appears the following, "Main line, two and one-tenth miles." State whether or not that is the amount of the main line of the Kansas City Southern in Road Improvement District Number 3.

A. Yes, it is.

Q. There appears on the map in addition, "Sidings, nine and fifty-six hundredths miles." State what that is.

A. That is the mileage of sidetracks in District Number 3.

Q. State whether or not the two and one-tenth miles include the shops of the Kansas City Southern or the roundhouse and other buildings.

A. Yes, it does.

Q. What are the total amounts of benefits which the assessors and the board have assessed against the property of the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company in this district?

A. $21,270.00.

Q. State whether or not that property, which is so assessed, is property used exclusively for railroad purposes.

A. Yes, it is.

212 Q. Distributing that over the line upon a line mileage basis, what do the benefits amount to per mile within the district?

Mr. Edwards: Objected to as irrelevant, incompetent and immaterial as not tending to show there has been any discrimination or any confiscation of the railway company's property in this road improvement district.

Court: The record shows for itself what it is too, Mr. McDonough. I think that question would be incompetent. The assessment shows what amount was assessed and how it lies.

Mr. McDonough: We offer to show the amount is $10,582.00 per mile, and save an exception to the ruling of the court.

To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Is it possible for sidetracks and buildings, as such, to be benefited by an improvement of this character, such as this highway?

Mr. Edwards: Objected to as incompetent, irrelevant and immaterial, and does not show the railway property has been discriminated against or that it has been confiscated by the assessment of this district.

Court: Overruled.
Mr. Edwards: Save exceptions.

Q. Go ahead and answer the question.
A. It is not possible for sidetracks and buildings to be benefited, as such, for the reason they are merely pertinent to the operation of the railroad as a unit. If there is any addition to the value of the railroad's property the addition is to the entire value of the
213 property; in other words, to the value of the railroad as an entirety, and it cannot be assigned to any particular building or sidetrack, it is merely used incidentally in the operation of the property as a suit.
Q. I wish to ask you this question. Suppose there should be an oil field developed on the line of the Kansas City Southern Railway Company in Sevier County, and that in this oil field there would only be two miles of the main track; then suppose that the shipments of oil transported by the company would add to its revenues the sum of say, two thousand dollars per annum, would the value thus attach itself to the two miles within the oil fields, or would it be spread over the entire line?

Mr. Edwards: Objected to as irrelevant, incompetent and immaterial for any purpose.
Court: Sustained.
Mr. McDonough: I offer to show the answer would be as follows: "It would be spread over the entire line" and save exceptions to the ruling of the court.

To the ruling of the Court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. In the assessment of railroad property generally how is the unit value distributed as between counties?
A. Generally on the main line basis.
Q. How is it done in Arkansas?
A. Well, the value of the railroad is distributed on the main line basis in Arkansas, except that the value—there is an arbitrary valuation placed on the sidetracks and buildings, which valuation
214 is assigned to the counties where the buildings are located.
Q. I wish to ask you this question. Suppose a road, eight hundred miles long, two miles of which was situated in an oil field, such as heretofore suggested, the production of which contributed two hundred thousand dollars to the net revenue of the railroad, how much would that add to the value of the railroad within the oil field?

Mr. Edwards: Objected to as irrelevant, immaterial and incompetent, and not tending to show any discrimination in the assessment of the railway company's property by Road Improvement District Number 3.
Court: Sustained.
Mr. McDonough: I offer to show his answer would be as follows: "It would add two hundred fifty dollars per mile per year to the net revenue of the road as a whole; it would add five hundred dollars per

mile per year to the net earnings of the portion in the oil field, which if a permanent condition and capitalized at 6 per cent of the increased capital value of that portion of the line in the oil field would average the sum of $8,333.00.

To the ruling of the Court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. You have stated in this road improvement district there were two and one-hundredths miles of the main line. How many miles of the main line in the Kansas City Southern?

A. 777 and fifteen hundredths.

Q. What portion of the main line, therefore, is in Road Improvement District Number 3?

215 A. Approximately one fourth of one per cent.

Q. In order for the property of the Kansas City Southern Railway Company within the limits of Road Improvement District Number 3 to be benefited $21,270.00, how much would the entire line have to be benefited?

Mr. Edwards: Objected to as incompetent, irrelevant and immaterial, and not showing any discrimination against the property in the assessment.

Court: Sustained.

Mr. McDonough: Save an exception; and I offer to prove his answer would be eight million, five hundred thousand dollars. Then I wish to ask him this question:

To the ruling of the Court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. How do you arrive at that conclusion?

Mr. Edwards: Objected to for the same reason.

Court: Let him get his answer down. Of course the objection will be sustained as to the question and answer.

Mr. McDonough: Save an exception, and I offer to show his answer would be as follows: "The benefit in the district is one fourth of one per cent of the whole benefit; one fourth of one per cent of eight million, five hundred eight thousand dollars is twenty-one thousand, two hundred seventy dollars.

To the ruling of the court the defendant at the time excepted, and asked that his exceptions be noted of record, which is accordingly done.

Q. What is meant by "operating ratio" as applied to the

216 operation of railroads?

A. It is that percentage of the gross revenue which is required to meet the operating expenses and costs, operating costs and taxes.

Q. What is the part remaining after operating expenses and taxes are paid?

A. Net revenue and profit.

Q. What is the operating expenses of the Kansas City Southern Railway Company?

A. The average for the five-year period ending December 31, 1920, was seventy-six decimal twenty-seven per cent.

Mr. Edwards: Objected to for the same reasons heretofore offered, and for the further reason that he does not give it down to something near the present date. It only goes to the last year, 1920, and it is incompetent and irrelevant, not showing or having any bearing upon the question at issue here, to wit, has the railroad company's property been discriminated against or confiscated by reason of the assessments made in this improvement district.

Mr. McDonough: I am asking these questions because they have been prepared especially to present to the court our theory, and this is only one of them. The ratio entering into this is a very important matter. That matter will come up more fully on the argument after the case is through. It is a matter of getting out what benefit will this property derive from this highway.

Court: That is the point you are driving at here and not whether it is discriminatory or not.

Mr. McDonough: Whether there is any benefit at all. If
217 there is no benefit at all it is discriminatory. Now, these questions are propounded for the purpose of showing two things, one that there is no benefit at all, and the other is what they have assessed is illegal and void because they are discriminatory.

Mr. Edwards: That act of itself carries with it a conclusive presumption that it was a benefit to this property. In other words, if he wants to bring in that question, he must assail the act, and not the assessors.

Mr. McDonough: There can be no conclusive presumption; it is prima facie. Unless I introduce testimony showing these assessments are discriminatory, then I fail. That is the object of these questions. The legislature in any number of acts could not take our property without due process of law, and to make a discriminatory assessment is taking the property without due process of law.

Court: You are trying to prove no benefits whatever, and this is for that purpose. The question, as I understand it, is whether or not your property has been discriminated against as to other property in the district.

Mr. McDonough: It is offered for both purposes.

Mr. Edwards: The legislature has determined there is some benefits to this property; otherwise they could not have included it in the district and confirmed the assessments against them; and opinions have repeatedly held that cannot be inquired into by the court unless that act is held arbitrary upon its face.

Court: Objection sustained.

Mr. McDonough: We offer to prove his answer would be an average for the five-year period ending December 31st, 1920, was seventy-

six and twenty-seven hundredths per cent. I save an exception to the ruling of the court in excluding the question and answer, and make that offer.

To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Suppose the construction of the highway in Road Improvement District Number 3 should result in an increase of a thousand dollars per year in the gross revenues of the Kansas City Southern Railway Company, how much of this sum would be net or profit?

Mr. Edwards: Objected to for the same reason.

Court: Sustained.

Mr. McDonough: You can't get all the question in at the same time. Each one of these supports our contention that the rates are discriminatory, and that is the purpose of it, as well as to show there should not be any benefits assessed against us at all.

To the ruling of the court in excluding the above question the defendant at the time excepted, and asked that its exceptions be noted of record, which is done.

Court: I don't -hink that is proper evidence to show an improper discrimination, because the legislature has said there was some benefits there, and that benefits has to be distributed among the other property of the district.

Mr. Edwards: Another objection I want to make to these questions and answers is the assessment complained of here is an assessment made upon the property as a benefit by reason of the improvements contemplated by the district, and not upon any increased earning capacity of the railroad, or revenue derived by the railroad, or any income from any particular property of the railroad company, or of the railroad company as a whole.

Mr. McDonough: I want to suggest to your Honor's statement he made just now, that the legislature declared that there was some benefit, that the legislature in the Myles Salt Company case declared there was some benefit. The Court of last resort stated the legislature could not declare there was some benefit if the evidence shows there was no benefit, and, therefore, the court held in that case that an island owned by the Myles Salt Company in a large lake which never overflowed, could not be benefited by any drainage system because it never overflowed, and, therefore, it could not be benefited; and although the legislature had said there was some benefit, the court took issue with the legislature, and declared there could be no benefit.

Mr. Edwards: That is a conclusion that it was arbitrary on its face.

Court: Yes.

Mr. McDonough: I save an exception to the court's ruling, and I offer to prove that the answer is as follows: "If a five-year average operating ratio was maintained the net would be $237.30.

To the ruling of the court in overruling said offer the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. How much would that be per mile of road?

Mr. Edwards: Objected to for the same reason.
Court: Sustained.
Mr. McDonough: I offer to prove that the answer would be: "Thirty and a half cents," and save an exception to the court's ruling it out.
220 To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. How much within the district? I mean Road Improvement District Number 3.

Mr. Edwards: Objected to for the same reason.
Court Sustained.
Mr. McDonough: Save exceptions, and offer to prove that the answer would be: "Sixty-one cents."
To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. If you capitalized the sum of sixty-one cents at six per cent, how much of an addition would it make to the value of the property within the district?

Mr. Edwards: Objected to for the same reason.
Court: Sustained.
Mr. McDonough: I save an exception, and offer to prove that the amount would be $10.17.
To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. If the additional gross revenue amounted to ten thousand dollars per annum, how much would be the benefit within the district?

Mr. Edwards: Objected to as incompetent, irrelevant and immaterial.
Court: Sustained.
Mr. McDonough: In order to be frank with the court,
221 I want to state to the court the reason for the admissibility of the testimony. That question has been involved in a number of road improvement assessment cases against railroads. It is the contention of these railroads here that it is proper to show what benefit can come to property used exclusively for railroad purposes in the district. It cannot be assessed regardless; it cannot be assessed simply for general purposes. It has been assessed at twenty-seven thousand dollars a mile; there must be some reasonable basis taken recently; that any increase in traffic which might come from the construction of this highway cannot be confined to the two miles of road within the district, but must be extended over the entire line. It would benefit the two miles if it benefited the entire line, but we have a right because that would show how much benefit there

was to the two miles. All of these questions are directed to that particular question, and that is the purpose for which it is introduced. It is in opposition to the presumption that the assessments are correct because you cannot assess our property which is not benefited in that district, and the Supreme Courts of the United States and Arkansas have held that way again and again. Now, if the usable value of our property is considered you must take in these facts we are now offering to show it is discriminatory. Court: If this was the only road on the whole line there might be something in your argument. I don't think that is a measure of getting to the profits.

Mr. McDonough: It is a question upon which Your Honor will have to pass. You can't pass upon it unless you get the facts before you.

Court: I think I can. Go ahead, gentlemen.

222 Mr. McDonough: Save an exception, and I offer to show that the answer would be: "$101.70."

To the ruling of the court the defendant at the time excepted, and asked that its exception be noted of record, which is accordingly done.

Q. How much benefits if the additional gross earnings were fifty thousand dollars per year?

Mr. Edwards: Objected to for the same reason.

Court: Sustained.

Mr. McDonough: Save an exception and offer to show the answer would be: $508.50."

To the ruling of the court the defendant at the time excepted and asked that its exceptions be noted of record, which is accordingly done.

Q. How many cars of strawberries, moving from De Queen to Kansas City, at the present rate of a dollar and twenty seven cents per hundred and minimum weight of seventeen thousand pounds, would be required to produce the gross revenue of fifty thousand dollars?

A. Approximately 232 cars.

Q. How many cars of cantaloupes, moving from De Queen to Kansas City, at the present rate of fifty-six cents per hundred weight, minimum weight, twenty thousand pounds, would be required to produce a gross revenue of fifty thousand dollars?

A. Approximately 446 cars.

Q. State your view, from your knowledge and experience, and study of the matter of benefits accruing to railroad property by reason of the construction of this highway, as to whether or

223 not there will be any increase or advancement in the value of the railroad property by reason of the construction of this highway.

Mr. Edwards: That is objected to as incompetent, irrelevant, and not tending to prove or disprove the issues.

Court: Overruled.
Mr. Edwards: Save exceptions.

A. The only benefit that could possibly accrue would be such a benefit as would be derived from an increase of traffic. By these operating ratios that we have offered to submit in evidence here we can determine how much of a given increase in traffic would be net or profit. My opinion is that the construction of the highway would result in a very small increase in the traffic, and, consequently, a very small increase in the value of the property.

Q. There are side tracks referred to, valued at the value given in the record. State whether or not those sidetracks are a part of the main line.

A. They are part of the unit value of the property. They are used not exclusively for business originating in De Queen or in District Number 3, but they are used for the accomodation of the entire traffic on the line which moves through the town of De Queen.

Q. Referring again to the matter of benefit, and if so, how much, state whether or not the figures which we have offered to introduce in testimony is the only means, or, rather, is the best means, in your judgment, to determine what benefit, if any, would accrue to the railroad property within the district.

Mr. Edwards: Objected to as incompetent and irrelevant.
Court: Go ahead.
224 Mr. Edwards: Save our exceptions.

A. In my opinion that is the only way the benefit can be determined is by ascertaining the approximate amount of traffic that would result from the building of the road and then applying the operating ratio to the gross earnings derived from that traffic, and in that way ascertaining how much the value of the road would be increased.

Q. You did that, did you?

A. Yes sir.

Q. And the result is shown in the questions and answers heretofore tendered?

A. Yes sir; that is, to say, if we would find that there was a sufficient increase in tonnage in the movement of traffic from the district to produce a net or gross revenue of, say, fifty thousand dollars per annum, which is entirely out of reason, the benefit within the district from that volume of traffic would amount to $508.50. In my opinion there could be no such increase as that possible.

Q. The Kansas City Southern Railway Company extends from Kansas City, in the State of Missouri, to Port Arthur, in the State of Texas, does it not?

A. Yes sir.

Q. The Texarkana & Fort Smith Railway Company operates that part of the line which is in the State of Texas, does it?

A. Yes sir.

Q. The railroad runs through what states?

A. Through the states of Kansas, Missouri, Oklahoma, Arkansas, Louisiana and Texas.

225 Q. How far approximately is it from De Queen to the state line between Texas and Arkansas at Red River?

A. It would be probably about forty-eight miles; something in that neighborhood.

Q. All traffic that passes south beyond Red River goes into the State of Texas, does it not?

A. Yes sir.

Mr. Edwards: Objected to as being incompetent and immaterial.

Court: Go ahead.

Mr. Edwards: Save exceptions.

Q. How far will the traffic, going north, move before it will go into the State of Oklahoma, approximately?

Mr. Edwards: Objected to for the same reason.

Court: Go ahead.

Mr. Edwards: Save exceptions.

A. I can't give the exact distance, but it would be probably about seventy miles.

Q. The line goes into the State of Oklahoma a short distance north of Rich Mountain, does it not ?

A. Yes sir.

Q. All traffic moving north and going beyond Rich Mountain, and beyond the state line just north of Rich Mountain, would be traffic moving in interstate commerce?

A. Yes sir.

Cross-examination.

By Mr. Edwards:

Q. Assuming that the building of an improved highway from De Queen east for a distance of eighteen miles does develop in

226 a general way the territory through which it runs, increasing the population and increasing new industries by it, and the traffic or earning capacity of the railroad is increased, would the value of the railroad property embraced in this district be increased and enhanced in value thereby, or not?

A. Yes, it would be increased just to the extent that that portion of the gross earnings was net or profit; that is, the gross earnings which arise by reason of the highway. For instance, if you would say that the building of this highway would bring about such conditions as would cause the Kansas City Southern to have one thousand dollars more per annum of gross revenue than they had before the highway was built, and that this increase was the direct result of the building of the highway, then their benefit or profit would be the operating ratio applied to the one thousand dollars gross earnings.

Q. Is it your opinion that railroad property—the main track, sidetrack and buildings—would sell for more, or is the market value increased by reason of the general development and improvement of the country?

A. I think the railroad has received a benefit from the general development of the country; it is what you might call a communal benefit. That would not be a direct and special benefit, and would not add anything to the property. It would be a benefit which would increase to all alike, and would not increase the value.

Q. In your opinion a railroad located in an undeveloped country would sell for and be valued as much as a line of railroad located through a developed country, would it?

A. That would depend entirely on the earnings.

227 Q. Then you base your benefits entirely on the capacity of the railroad, do you not?

A. In my opinion as to whether or not there would be any benefit by reason of the building of the highway simply comes down to whether or not the building of the highway would increase the gross earnings of the property. If it would, there would be a benefit to that extent; if it wouldn't, there would not be a benefit to any extent.

Q. Prospective buyers, according to your theory, would prefer to buy a railroad, located in an undeveloped and untaxed country than one in a developed and well-taxed country?

A. I think, other things being equal, the road in the highly developed community would be the more valuable of the two.

Q. Now, assuming the highway being constructed by this improvement district an undeveloped country and makes accessible to De Queen and Lockesburg a section of country in the eastern part of Sevier County and the western part of Howard County who trade at other points and whose traffic goes to other points or railroads, if by this improvement that traffic is turned toward De Queen and Lockesburg and routed out over the Kansas City Southern Railway Company, assuming that be true, in your opinion, would the railroad be benefited by such improvement?

A. If would be benefited to a slight degree.

Q. You only have a general information of the country east of here, I believe you stated?

A. I have studied the reports that have been made.

Q. You have never been along this highway to its eastern extremity?

228 A. No sir.

Q. How are the assessments for State and County purposes fixed in Arkansas upon railroad property? What is the method adopted by the State Tax Commission?

A. The State Tax Commission divides into assessments, first, the assessment against the main line, which in our case is twenty-seven thousand dollars a mile; then comes the assessments against the sidetracks, which is at the rate of three thousand dollars a mile; then the assessment against the rolling-stock, which is thirty-one hundred dollars a mile; then the assessment against the buildings

at an arbitrary valuation, which the State Board fixes; then there is a small assessment made against such property as tools and materials for repairing the line. That is the sub-division that is followed in Arkansas.

Q. I will ask you, as a matter of fact, if the main line of the railroad of the entire line within the State is not assessed as a whole, and then the rate per mile computed from that, and then each county is in school districts, and assessments figured from that.

A. Yes, that is the general method.

Q. That is the general method as to the main line, but they do not follow that method in assessing sidetracks and buildings, do they?

A. Yes sir, they follow exactly the same method in assessing the side tracks that they do the main line. The only difference is in the rate in value per mile. The side tracks are assessed by the mile just like the main line is.

Q. And it is assessed per County instead of State, is it?

229 A. The valuation is allocated to the county where the side track is located.

Q. In your study of the railroad taxation have you studied the problem generally, or just insofar as it pertains to the Kansas City Southern Railway Company?

A. I have studied it generally, as far as my time and opportunity would permit; but I have studied it specially in the six states in which we operate.

Q. Then in studying the taxation of railroads did you take into consideration the business the road does, and its earnings, and so on? In making your study did you also study those questions in connection with it?

A. Yes sir.

Q. Then I will ask you if railroad property running through a highly developed country such as is traversed by the New York Central and the Pennsylvania system isn't more valuable than railroad property of a railroad traversing a country like the Kansas City Southern does?

A. It depends entirely on the earnings of the line as to the earnings. They may and they may not be. You can find a road traversing a very highly developed country which would be in the hands of a receiver. No doubt there are many such.

Q. Assuming that a railroad runs through a highly developed country with good roads leading to it with a certain area to get over from and another road runs through an undeveloped country with the same area to draw from, which railroad would be worth the more?

A. It would depend entirely on the earnings.

Q. Which would produce the greater earnings?

230 A. It might be the one that ran through the less highly developed country.

Q. Take with the same class of country, everything exactly the same with the exception of the development of the country, which railroad would do the most business and make the most earnings?

A. That is a question you can't give a general answer to. It depends entirely on the circumstances of the case. For instance, here is the Kansas City Southern running through a wild, undeveloped country almost from the Missouri line to its terminus at Port Arthur, and yet its earnings per mile are greater than some lines like the Wabash, for instance, or the Chicago & Eastern Illinois, which runs through a very thickly settled and well developed country. Like the Chicago & Alton the earnings of the Kansas City Southern through this undeveloped country have greater gross earnings than the C. & A.

Q. Isn't that due to the fact that the Kansas City Southern has a larger area in which to draw traffic?

A. It is due to the fact it receives a more profitable traffic, that its earning conditions are more favorable. The development of a country doesn't necessarily raise any increased earnings of a railroad, and particularly the building of highways adjacent to often draws them from railroads.

Q. If a railroad ran through a country of a hundred thousand square miles with a hundred thousand population and no more, would its earnings be as great as another road running exactly a hundred thousand square miles with a million people in it and no more?

Mr. McDonough: I submit that question cannot be answered 'yes' or 'no.'

231 A. The road may have a through traffic that would give it great earnings regardless of the country that it ran through; in fact, that is what gave the Kansas City Southern its earnings.

Q. Suppose the Kansas City Southern didn't have any roads at all leading to or from it east and west, what effect would that have on its earnings?

A. I don't think it would have any very noticeable effect owing to the fact it would have sufficient through tonnage to give it net earnings whether it derived any local business at all or not.

Q. Somewhere that tonnage would have to strike the road, wouldn't it?

A. It does strike it at Kansas City.

Q. In other words, the whole revenue of the Kansas City Southern would depend upon the freight it received from other railroads?

A. It depends mainly upon that; yes.

Q. I believe you stated on examination by Mr. McDonough what the earning capacity of the Kansas City Southern was up to a certain time in 1920?

A. I stated that the percentage of their gross earnings which represented net or profit was seventy-six and twenty-seven hundredths per cent. That is to say that their profit then would be twenty-three and seventy-three hundredths per cent or net. To make that a little clearer I will say out of every one thousand dollars gross earnings under that ratio their profit would be $237.30.

Q. Do you know whether or not the gross earnings of the railroad company was increased over the 1920 earnings in the
232 year 1921 up to the present time?

A. We have our operating statistics made up by the year and I am not in possession of any figures as to this year's operations, the year not being concluded. I have gotten the figures up even years at the end of each year.

Q. Have you information that the gross earnings of the company and the net earnings of the company have increased in 1921 over the same period of 1920?

A. I believe there has been an increase over 1920.

Redirect examination.

Q. What was that increase due to?

A. It was—the traffic department probably could give testimony on that score better than I could, but my opinion is it has been principally due to the through movement of grain from Kansas City to the Gulf.

Q. Is it due in any respect to the building of this highway in this road improvement district?

A. Not in the least; absolutely not.

Questions by the Court:

Q. You think a road running directly east from your road, running to no other road—connecting with no other railroad but this would be a detriment to your road?

A. I think the building of highways and the working up of those highways into great systems, as you know is contemplated, would have the effect of introducing an element of competition sooner or later.

Q. This is going straight east and west across your road, running from Arkansas to Oklahoma?

233 A. Likely it will be connected up in time with roads leading into Nashville or some point east where in the process of time the traffic would move away from us instead of to us.

Q. Then, you think a railroad without any roads running to it at all would be preferable to one being built like this?

A. I didn't say it, Judge.

Recross-examination:

Q. Have you had any experience or do you know anything about the assessment of farm property in this portion of Arkansas?

A. Well, I know it is assessed on a much lower basis relatively than railroad property for general taxation.

Q. Do you know anything of the assessment of the farm property in this Road District Number 3?

A. Only in a general way.

Q. Now, the two miles of your railroad running through this district is assessed by the State Tax Commission at the sum of $54,000.00, isn't it?

A. For the main line it is.

Q. And the assessors for the district have levied benefits of seven thousand dollars against that fifty-four thousand dollars' worth of property?

A. Yes sir.

Q. Can you tell the court whether or not there is as much or more than seven thousand dollars of benefits assessed against fifty-four thousand dollars' worth of farm lands in this district?

A. I have no personal information as to the assessments made against farm property.

Q. Then you are not prepared to tell the court whether or
234 not there is a discrimination against your road in the matter of assessments in this district?

A. I am prepared to tell the court there is a discrimination in the assessment of our road in this district because it isn't a question of valuation, it is a question of benefit. It doesn't make any difference whatever about the valuation of our property the whole question is, is the Kansas City Southern Railway Company benefited seven thousand dollars.

Q. Have you taken up the question of benefits to the farm lands in the district?

A. No.

Q. Could you take 160 acres of land lying three miles from town here, that is uncleared, producing no revenue, and tell the court how much that might be benefited, or whether or not the assessor has made an error in assessing benefits against that particular tract?

A. I haven't made any study of the farm lands in this district.

Q. Now, a section of land in the district, without any improvement—nonrevenue bearing—would not be benefited as much as this railroad company would be by building this road east and west, would it?

A. Well, I think it would.

Q. In what way?

A. I don't think there would be any perceptible benefit to the railroad, but there might be some benefit to the farm.

Q. How might it be?

A. If the farm was increased in value by reason of the build-
ing of the road the owner of it could obtain the benefit of
235 that increase by selling his farm.

Q. Provided he wanted to sell it?

A. If he didn't want to sell it and wanted to rent it, it would probably rent for more by reason of the good roads.

Q. In other words, he could get the products from that farm to town easier, couldn't he?

A. If he didn't want to sell it or rent it either, he could still get the benefit by the reduction of his cost in transportation of his products.

Q. In other words, the benefit to that farm would be increased by reason of the fact that the produce could be marketed at the Kansas City Southern Railroad, wouldn't it?

A. Not necessarily; it might be benefited by reason of the fact

that he could get his products to market, but whether they would move it here on the Kansas City Southern or some other road, I don't know.

Q. I will ask you how your property is assessed in the various school districts? Take Gillham, De Queen and Horatio, for instance, in Sevier County. How do you pay your school taxes at Gillham?

A. We calculate the main line mileage in the school district and the mileage of sidetrack in the district, and we multiply the miles of main line by twenty-seven thousand, the miles of sidetrack by three thousand; then the rolling stock is apportioned to each district on the basis of the main line mileage in the district. For instance, in the Gillham school district there are three miles of main line, there would be three miles of rolling stock apportioned to the Gillham district; then whatever buildings are located in the limits of that district, the value would be assigned to that
236 district; and whatever materials and tools are located in that district, the value of that material would be assigned to the district.

Q. You understand the voters in Arkansas can have a legal tax up to and including twelve mills?

A. Yes sir.

Q. Then if the Gillham district votes eight mills you just pay eight in that district?

A. Yes sir.

Q. If De Queen votes twelve you pay twelve here?

A. Yes sir.

Q. In other words, each school district is a unit of taxation?

A. It is a taxing sub-division; yes.

Q. You have a good many road improvement districts along the Kansas City Southern Railroad, haven't you? You are in several right here in De Queen?

A. We have a good many in the State of Arkansas.

Q. Each one of those districts constitutes a separate taxation unit, doesn't it, or unit for taxation?

A. Taxing sub-division; yes.

Q. Now then, in your testimony about the railroad not being benefited, you took into consideration the earnings of the railroad from Kansas City to Port Arthur, didn't you, and the conditions from Kansas City to Port Arthur?

A. What the benefit, if any, would be to the entire line from Kansas City to Port Arthur.

Q. You are not taking into consideration in your testimony here the relative amounts of your assessments to the assessment of
237 other property in the district of like value? You are not doing that in your testimony?

A. I don't think I understand your question.

Q. In your question or testimony stating that the railroad is not benefited you don't take into consideration what the other property of the same value in the district has also paid and in the use or benefits—in other words, you are not comparing your railroad

property with the value of the other property in the district with this species or class of other property?

A. The taxation of property in general and benefit taxation are two entirely different things.

Q. I understand that, but I am asking you if you do that, if you are making any comparison with assessments on other lines?

A. We have no voice in the matter at all.

Q. Are you making that kind of comparison here in your testimony?

A. I don't understand where any comparison is required.

Q. We are not asking you about any understanding, but what you do.

A. We pay the assessment against the property of the Kansas City Southern in every school district and every county and every tax sub-division through which the railroad runs.

Question by the Court:

Q. That isn't the question, Mr. Phelps. In your statement in which you claim that the railroad company derives no benefit from the building of the road in Road District Number 2 and Number 3, do you take into consideration the taxes that other railroad property in the district is paying as compared with the taxes you are paying in the matter of benefits?

238 Mr. McDonough: I want to make two objections to that; the first is, it is incomprehensible; the second objection is that we are trying to get at here the question of whether or not there is discrimination.

Mr. Isbell: I will strike it all out and ask him shorter ones.

Mr. McDonough: The matter of assessments for general taxation is, therefore, not relevant.

Mr. Isbell: I will strike that out.

Recross examination resumed:

Q. Do you compare assessments levied against your railroad property here with assessments levied against the farm lands in the district to see whether they are just or unjust?

A. You mean as to general taxation?

Q. Yes?

Mr. McDonough: That is objected to.

Court: I don't think that would be competent.

Mr. Edwards: He made this statement a minute ago, that the railroad property was assessed relatively higher than the farm lands of the country for general or State taxation purposes. Now, Mr. Isbell is asking how he arrives at that conclusion.

Mr. McDonough: The question is this, not whether they have made the same assessment against the railroad property that they have against the farm property, but whether they have assessed against the railroad property benefit illegally and in a discriminatory way. Discrmination does not mean that there may be the

same assessment against farm property that there may be against railroad property. Railroad property is a different class. This is a benefit question, and, therefore, it must be assessed on the basis of benefits. The Supreme Court of the United States stated
239 in the case I referred to this morning that this act didn't provide any way of assessing these benefits, therefore, they cannot go to the question of general taxation, and so, as you pay the same assessment on that that other property pays, therefore, you must take that into consideration in assessing benefits, because property worth a million might not be benefited worth a penny and property worth a thousand might be benefited a thousand. It is a question of benefits.

Mr. Isbell: That is true, but the whole question here is one of discrimination; and how can we arrive at the fact of discrimination until we find out what the other properties in the district are paying?

Mr. McDonough: If it is a question of discrimination and if, as a matter of fact, the railroad property is not benefited at all, would you be entitled to assess benefits even though you assessed the farm property a hundred per cent?

Mr. Isbell: I will answer that by asking another question. If there is 160 acres of farm land and it is not benefited a particle, can you leave that out and not assess benefits?

Mr. McDonough: Yes.

Court: The Supreme Court says you can't. My idea is, here is 160 acres of land in cultivation; this road building out there does not make that 160 acres produce one blade of grass more than it did before. What makes it more valuable? They can ship their products by that road to the Kansas City Southern Railroad and ship it off, where if they didn't have it there it would have lain there and rotted. That makes it more valuable to that place.

Mr. McDonough: That, as I view it, would exclude the
240 idea of trying to compare the two classes of property.

Court: You say it doesn't benefit your railroad a bit except it makes the railroad have more freight to carry and it makes the road so he can bring his fruit to town. It makes it more valuable because they can get their produce to the railroad. That is my idea about it.

Mr. Isbell: I have asked the witness three or four different ways and he is arguing it every time. The Court has limited it to the question of discrimination. Now, how are we going to arrive at that except by comparing the assessments against the property?

Court: That is all right.

Mr. McDonough: He has answered it, and I think if the proof shows that 160 acres wasn't benefited at all it would be discrimination if they put any assessment on it.

Court: The Supreme Court says it has to be assessed or left out of the whole assessment.

Mr. McDonough: I don't think our Supreme Court holds if the proof shows it is not benefited you can assess it.

Court: The Supreme Court says that.

To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Assuming that the tax authorities have taxed your railroad for State and county taxes justly and have taxed the farm lands in the district justly, can you tell the Court that the benefits levied by the assessors of the district on your property is greater than that levied on the farm property?

Court: You can answer that "yes" or "no."

241 A. In my opinion the benefits levied on our property is greater than that levied on other property in the district.

Q. Have you examined any of the farm property to see what the benefits were assessed at in the district?

A. No sir.

Q. Then upon what do you base your opinion?

A. I base my opinion on the assessment that is made against our property. I know that we are assessed, for instance, $21,270.00, and I don't believe we are benefited $25.00.

Q. Then, if you haven't examined the assessments of other property in the district, you can't compare the assessment of your property with the assessment of other property, can you?

A. I haven't undertaken to make comparisons between our property. It isn't a question for me to pass on.

Court: Just answer his question.

A. My opinion is the assessment that has been made against our property is unjust.

Court: Just answer his question.

Mr. Edwards: Just read the question to him.

A. I know in a general way what the assessment——

Court: Let it go; put down there that he doesn't answer it.

Q. Have you examined the assessment against the property belonging to the town?

A. I have examined it to some extent.

Q. How is that with reference to the assessment against the railroad property?

A. The assessment that was made against that class of property is about the same that was made against other property of the same kind.

242 Q. Then, are the assessments made by the assessors against the land in the town belonging to the railroad company fair, in your opinion?

A. Well, we haven't enter- into any contest on them.

Q. That is not the answer. Are they fair?

A. I don't think there is any discrimination in that class of property.

Question by Mr. McDonough:

Q. That refers to the lots owned by the Kansas City Southern Railway Company not used by the railroad?
A. Yes sir.

Recross-examination resumed:

Q. Assuming that the assessors had a right to pro rate the benefits in proportion to the assessed value of the property in the district, can you point out a single piece of land or town lot that has been assessed at a lower rate of benefits or assessments than your railroad property? I am not arguing the right, I am assuming that the law gives them the right to pro rate the benefits upon the property in proportion to its assessed valuation. I ask you whether or not you can or cannot point out any single piece of property in the district, whether acreage property or town lots, that is assessed at a lower rate than is your railway property?
A. No sir.

Redirect examination:

Q. You were asked by counsel on the other side as to whether or not an increase of traffic would be a benefit to this railroad company's property. Assuming for the sale of argument that increase
243 in traffic is a benefit, does that benefit accrue to the property or line within the district or does it accrue to the entire line?
A. It accrues to the entire property as a unit.
Q. Then, if the traffic by the construction of this road should increase a thousand dollars under your estimate given them and upon the facts assumed in that estimate, that would be an increase of how much net profit to the entire line of railroad?
A. $237.30.
Q. Then how much would that benefit the railroad company's property within the district?
A. Thirty and one-half cents.

Court: You have gone over all that, gentlemen.
Mr. McDonough: No; they brought it out themselves.
Court: I have heard him answer that twice before.
Mr. McDonough: Your Honor excluded it this morning. Now, it becomes admissible because of the fact that they have opened the question.
Court: They haven't opened the question about what it will benefit the whole eight hundred miles of railroad.
Mr. McDonough: They have opened this question, that the benefit to the railroad company would be dependent upon the amount of traffic. Now, that opens the question of whether or not that benefit goes to the particular line in the district or to the entire district.
Court: He answered that a while ago by saying roads didn't benefit the railroad any at all.

Mr. McDonough: The record shows what it is. I don't think Your Honor has it exactly right, but the record shows what it is.

244 To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. On cross-examination you were asked about the construction of highways in highly developed communities, and the earnings of railroads in those communities. State to the court whether or not in your study and experience of highways, like the one in controversy, — follow the development and business of a community, or whether or not they precede it and create it.

A. They follow it.

Q. And why? What are your reasons for stating that?

A. I think that highways are an effect of advancing civilization rather than a cause. The conditions that make it necessary and desirable to build hard-surfaced highways are because the growth of population and the development of the country causes a demand for that sort of thing. The building of the highways don't necessarily cause the development of the country; the development is the cause of the highway.

Q. You were also asked concerning the earnings of a railroad running through a highly developed country. I will ask you to state whether or not the rates on commodities do not materially affect the earnings of a railroad.

A. They do.

Q. The rates are regulated, are they not, by State and United States regulatory bodies?

A. They are.

Q. This carrier does not *d*ix interstate rates except file them

245 and they are approved or disapproved by the Interstate Commerce Commission?

A. Yes sir.

Q. The intrastate rates are regulated by the railroad commission of the State?

A. Yes sir.

Witness excused.

246 J. R. Smith, called by the Plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. You live in De Queen, do you?

A. Yes sir.

Q. Do you hold any official position in Sevier County?

A. County surveyor.

Q. Did you go with Mr. Nusom and Mr. G. W. Morgan in a tour of inspection over this road improvement district in controversy?

A. Yes sir.
Q. Did you assist them and point out to them the various roads and also the streams and general nature of the country in the district?
A. Yes sir.
Q. Did you assist in making a map of the district or in giving them the data for it?
A. Just giving them the data.
Q. I will ask you to examine the map which I now hand you and state whether or not, in your opinion, that is a fairly correct representation of the district, including the roads, streams therein, and including also the towns.
A. Yes sir.

Mr. McDonough: I ask that this be marked Exhibit A to the testimony of Smith's testimony.

Map referred to is here introduced in evidence, marked Exhibit A to the evidence of J. R. Smith, and is attached hereto. See above map Ex. A to J. R. Smith following page 65.

(Here follows map marked side folio page 246½.)

247 Q. The road in controversy thereon in Road Improvement District Number 3 is shown on the map as Road Number 3, is it not?
A. Yes sir.
Q. And the Bankhead Highway is also shown, is it not?
A. Yes sir, it is through the district, I see.
Q. The Cosatot river is shown?
A. Yes sir.
Q. Lockesburg is also shown?
A. Yes sir.
Q. And De Queen?
A. Yes sir.
Q. And Horatio?
A. Yes sir.

Mr. McDonough: That is all I wanted to ask Mr. Smith.
Mr. Edwards: No questions.

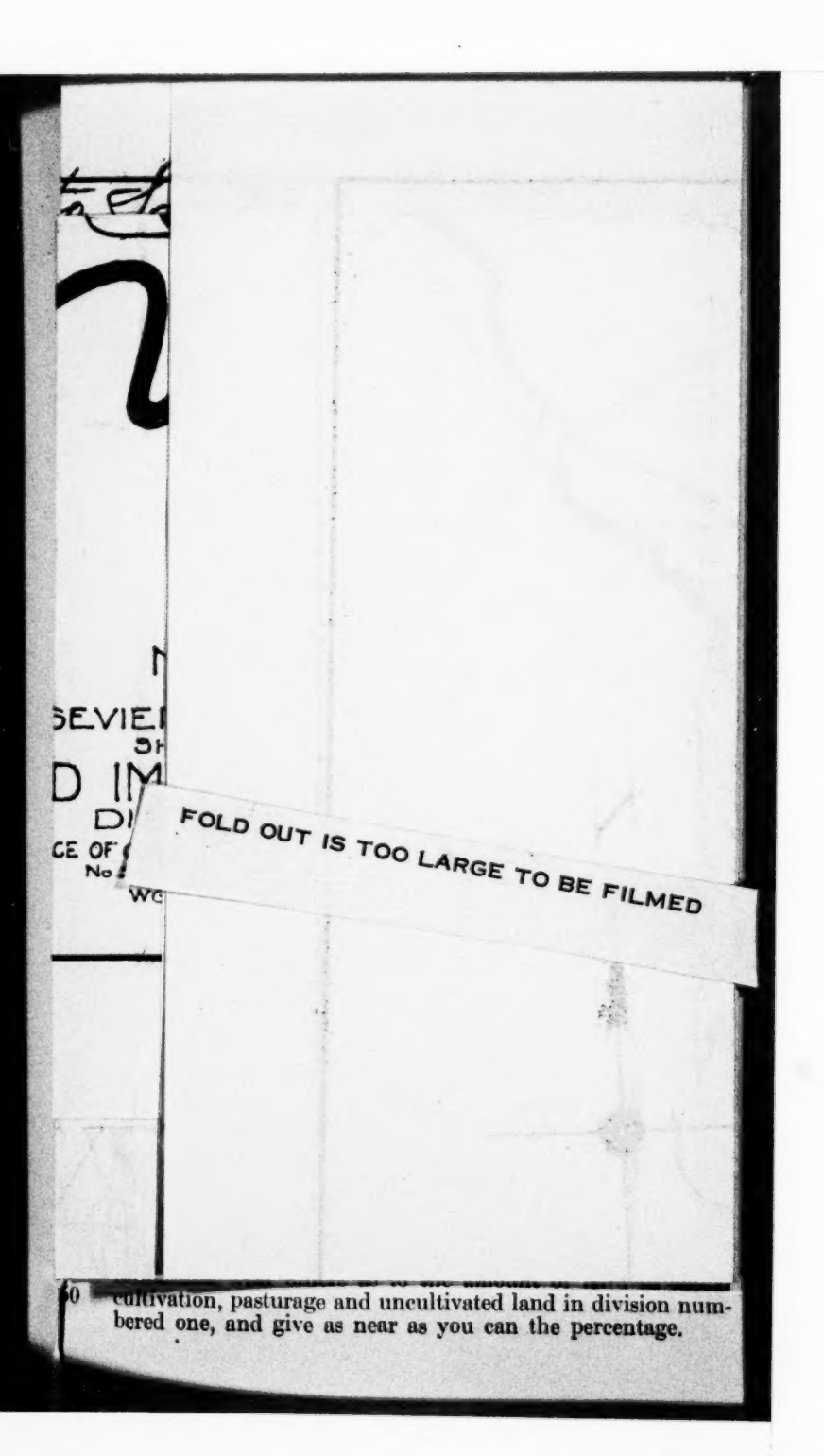
Witness excused.

248 J. T. Newsom, called by the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. What is your connection, if any, with the Kansas City Southern Railway Company?
A. Agriculturist.



cultivation, pasturage and uncultivated land in division numbered one, and give as near as you can the percentage.

Q. What is your connection, if any, with the Kansas City Sou
ern Railway Company?

A. Agriculturist.

Q. Where is your home?

A. Kansas City.

Q. How long have you been employed by the Kansas City Southern Railway Company?

A. Since 1919.

Q. I will ask you if you assisted in the making and preparation of Exhibit A to the testimony of Mr. Smith.

A. I assisted in the collection of the data.

Q. I wish you would describe generally this district—Road District Number 3. You can see the map, if you wish, and refresh your memory by any memoranda you have generally.

A. It extends generally south of east of De Queen and across the Cosatot river, and it ends at the county line on the Saline river.

Q. What streams of water are through the district, or on either side of it?

A. The Cosatot river and the Saline river and their tributaries.

Mr. Edwards: We want to object to this testimony as being incompetent and irrelevant, and not tending to show any discriminations.

Court: Go ahead. I don't know what it has reference to.

249 Mr. Edwards: Save exceptions.

Q. Have you divided that map in the preparation of it into divisions, such as one, two and three? If so, describe what they are, and state whether or not they are down on the map.

A. Yes sir, the entire district is divided into divisions—seven divisions.

Q. What are they?

A. One, two, three includes the territory east of the Cosatot river; A, B, C and D that territory west of the Cosatot.

Q. Take division one and describe what that is.

A. In what respect?

Q. As to the amount of its territory and the surface of it.

A. The surface of division one could be called rolling or undulating. It is drained by the tributaries of both the Cosatot and the Saline, with the water-shed near the middle of the district.

Q. About how many square miles in that division?

A. I have got it in a memorandum here. Twenty-seven square miles.

Q. Describe the drainage from the water-shed which you have just mentioned in this division one.

A. The water-shed as mentioned is near the middle of the division, extending north and south. East of that water-shed the drainage is by the tributarities of the Saline river, flowing east or southeast; and those west of the water-shed flows generally west and southwest.

Q. State whether or not you made an investigation yourself in connection with others as to the amount of land in actual

250 cultivation, pasturage and uncultivated land in division numbered one, and give as near as you can the percentage.

A. I did make such an examination, and estimated of the total area in district number 1 there is about 75 per cent now in cultivation or in use for tame pasturage as used in rotations.

Q. Of the amount not in cultivation about what per cent could be placed in cultivation?

A. I would say there is an additional amount of from five to ten per cent of the total area that is suitable for cultivation.

Q. What do you say of the remaining fifteen per cent or twenty per cent? How would you class that?

A. I would class that as waste land, suitable or fit for use only as wild pasturage.

Q. I wish you would describe the soils found in sub-division number one.

A. The soils in sub-division number one are generally rather a heavy type of red clay mixed with gravel of considerable depth.

Q. As observed in the banks of the branches what can you say as to the fertility of that soil?

A. Such soils are rather of high-grade fertility when first cleared and put in cultivation. The soils in this district appear to be suffering somewhat from depleted fertility, due probably to improper handling.

Q. Is it a soil from your knowledge and experience which would wear out, as we sometimes say of soil?

A. Yes, it would wear out; any soil will do that.

Q. What is your judgment as to the length of time, if you can tell, that that sub-division, when referring to the cultivated
251 areas, has been in cultivation?

A. Of course I couldn't tell that by looking at the land.

Mr. Edwards: Anything other people tell him would not be admissible.

Mr. McDonough: I am not asking him what other people told him.

Q. Take the appearance of the land, or presence or absence of stumps, or other conditions, give your opinion as to whether or not it has been in cultivation a long period of years or a very short time.

A. The major portion of it appears to have been in cultivation for a good many years.

Q. What are the principal crops in that sub-division?

A. The crops observed were principally corn, cotton, cow-peas, velvet beans, soy beans, cantaloupes and strawberries.

Q. Did you mention peanuts?

A. No; peanuts also. There are peanuts grown also.

Question by the Court:

Q. You saw some peaches too, didn't you?

A. Only around the farmhouses just for home use.

Direct examination resumed:

Q. From your investigation state what proportion, if you can, of the farm products marketed at Lockesburg came from that area of sub-division one.

A. I could only give an estimate of that. Judging from the country in general, I would say by far the major portion of the farm products marketed at Lockesburg do come from this area.

Q. Road District Number 3 runs throught that division, does it not?

252 A. Yes sir.

Q. As shown on this map?

A. Yes sir.

Q. At the time you made the investigation there, was it then a hard-surfaced road?

A. No sir.

Q. When was it you were there?

A. The 21st, 22nd and 23rd of July.

Q. Up to that time were there any hard-surfaced roads that aided in the development of that sub-division?

A. No sir. Well, let me amend that by saying there is a hard-surfaced road running south from Lockesburg.

Q. Road Number 7 on the map?

A. Yes sir.

Q. That runs through the western part of this sub-division?

A. Through the western end of it; yes.

Q. What is the logical market of that sub-division number 1?

A. Lockesburg.

Q. That is on the De Queen and Eastern?

A. Yes sir.

Q. The highway you have just mentioned enters that sub-division near the southeast corner, does it not, and runs north through oLckesburg and then out nearly at the northwest corner of the sub-division?

A. Yes sir.

Q. And then runs on through sub-division two?

A. Yes sir, and connects with the Bankhead Highway north of the district?

Q. And that connection is shown on the map?

253 A. Yes sir, beyond the district.

Q. I wish you would state from your investigation of that matter and from your knowledge of the surrounding conditions what places would be the natural markets of the farms in sub-division one?

A. Lockesburg would be the natural market.

Q. If there should be any increase in the gross production of farm products in that region, where then would they go?

A. They would go to Lockesburg; that is where they should go.

Q. I wish you would describe sub-division number 2 as shown on the map. State where that is.

A. Sub-division number 2 lies north of sub-division number 1, and extends to the northern line of the district, as shown on the map.

Q. On that appears the following figures, "fifty per cent cultivation". State whether or not that, in your opinion, represents the true percentage of the land in cultivation.

A. It does.

Q. It is also stated thereon, "25 per cent suitable for cultivation." Does that state the true percentage of the land suitable for cultivation which is undeveloped as yet?

A. It does.

Q. There is also the figures, "25 per cent unsuitable." State whether or not, in your opinion, that is true of the land in that sub-division which is unsuitable for cultivation.

A. It is.

Q. Did you figure the number of square miles in that district?

A. Yes; twelve square miles.

254 Q. Describe its surface.

A. The soil is distinctly sandy; generally, I am speaking of. The general soil of the sub-division is generally sandy with a light red or yellowish clay sub-soil.

Q. Describe its drainage.

A. It is essentially the same as sub-division one.

Q. What do you say of its fertility?

A. Such soils are of sandstone parentage and are not of high grade fertility.

Q. What kind of crops did you find in that sub-division—crops grown there generally?

A. Mainly corn, cotton, sorghum cane and sweet potatoes.

Q. Any watermelons?

A. I don't recall having seen any.

Q. You will refer to that memorandum; you mentioned watermelons and sweet potatoes.

A. I mentioned potatoes, yes sir; yes, I recall the watermelons now.

Q. I wish you would state with reference to sub-division 2 and also sub-division 1 as to whether or not truck farming has been developed there to any very great extent, and if to any extent state to what extent.

A. There is no appreciable development of truck farming in division number 2 as it is done in division number 1.

Q. I wish you would state, if truck farming should be developed in either sub-division 2 or sub-division 1, whether or not,

255 even if this road in District Number 3 should be made a hard-surface road, such products, such as peaches and perishable fruits could be profitably transported from those sub-divisions over to De Queen, and there loaded on the cars. Give us your view as to that.

A. There would be no reason for that except in case of materially higher prices at De Queen than could be had at Lockesburg or a marked difference in freight rate.

Q. What effect, if any, does the hauling of perishable fruits and melons, such as peaches, cantaloupes, and other fruits and vegetables have upon those products by hauling them in trucks for a long di

tance in the event that a party wants to ship them to such markets as Kansas City, Omaha, and other places in the North?

A. They should go in refrigerator cars at the earliest moment after being gathered.

Q. Why?

A. Because they suffer injury after they are gathered from the trees, vines or bushes, whatever they are—they suffer injury and deteriorate by reason of being kept out of refrigerator cars, and the additional hauling and the additional jolting and jarring that they will get is also injurious to them.

Q. How is sub-division number 2, last referred to, served by either railroads or highways?

A. The De Queen & Eastern runs through it, across it, and has a station just north of the northern boundary—Provo, I believe, is the name of it; and there is what is known as a public road—an average country road for this whole district in general—that also extends northeast from Lockesburg approximately parallel to the De Queen & Eastern; and then there are roads running north and
256 south through the eastern end of sub-division 2 that connect it on the north with the Lockesburg-Provo road, and on the south with Road Number 3.

Q. These roads are shown on this map, are they not?

A. Yes, here is one of them that is shown.

Q. That is the road coming from Provo down toward Milford?

A. Yes, and there are some other roads right through here to that road, not shown on the map.

Q. In addition to the colored roads shown on the map, such as Road Number 3 and Number 7, there are then country roads which are shown in black lines; for instance, running from Provo northwest and north and southeast from Provo?

A. Yes sir, and those to the southwest coming down here.

Q. Those are shown on the map?

A. Yes sir.

Q. What in your judgment would become of fruits and vegetables and other products grown in subdivision 2 when they were ready for the market? Where would they go?

A. Either to Lockesburg or Provo. One of those points would be the logical market; Lockesburg mainly.

Q. I wish you would describe sub-division 3.

A. Sub-division number 3 includes the river bottom land within this road improvement district Number 3 lying on the west bank of the Saline river, and to the east of the Cosatot river; part of it is here and a part is here. We included those in the same subdivision because of the same similarity of soil and the conditions on the Saline river in sub-division 3.

Q. It is shown on the map you have fifty per cent in
257 cultivation. What does that mean?

A. That means there is fifty per cent of that area now in cultivation.

Q. Does that represent your best judgment as to the amount of that land that is in cultivation?

A. Yes sir.

Q. You have also "ten per cent suitable"?

A. That is an additional amount at ten per cent that is adapted for agricultural purposes and could be economically placed in cultivation but is not now being used as cultivated land.

Q. Does that to your best judgment truly represent the per cent of that kind of land?

A. Yes sir.

Q. There is also on that sub-division "forty per cent unsuitable." Does that truly in your opinion represent the per cent of unsuitable land for cultivation in that sub-division?

A. Yes sir.

Q. Why is that in your opinion unsuitable for cultivation?

A. Well, a large portion of it is overflow land, and it is marshy and branch bottoms along the tributaries that come into the Saline river there that for one reason or another would be unsuitable for agricultural purposes.

Q. State in your opinion or best judgment the number of square miles of territory in that sub-division.

A. Fourteen.

Q. Describe the soils found in sub-division 3?

A. A very heavy type of alluvial river bottom soil of high fertility, and of a character that will maintain its fertility
258 for a long time if reasonably well handled.

Q. What was your judgment from the appearances of the cultivated lands as to the length of time they had been in cultivation?

A. The appearance of it would indicate that they had been in cultivation for a number of years.

Q. State what are the principal crops in that sub-division.

A. Corn and cotton, with the emphasis on cotton.

Q. State whether or not, taking into consideration the nature of the soil in that sub-division, there can be within the reasonably near future any substantial increase in the products of that sub-division.

A. The several increases that would come would be from the placing of that ten per cent in cultivation that is not now so used, or from a fundamental change in the method of farming that is used.

Q. Where are the markets of that sub-division 3?

A. Lockesburg.

Q. State whether or not in your opinion the products of that sub-division, even if this road in controversy is built, can be profitably carried and started to market from De Queen.

A. Only in the event of a marked difference in market prices at De Queen and Lockesburg; enough difference to pay for the haul.

Q. Would there be as to the transportation of perishable fruits from that sub-division the same reason against it that you have mentioned against number 2 and 1?

A. Yes sir.

Q. I wish you would describe sub-division A.

A. Sub-division A is the rivier bottom lands lying west of
259 the Cosatot river.

Q. That is shown on the map, is it?

A. Yes sir.

Q. There appears on the map which you made the figures, "60 per cent cultivation"?

A. Yes sir.

Q. Does that represent, in your judgment, the amount of land in cultivation in said sub-division A?

A. Yes sir.

Q. There appears thereon the words "20 per cent suitable." Does that represent the amount of uncultivated lands which is suitable for cultivation?

A. Yes sir.

Q. There also appears thereon the words "20 per cent unsuitable." Does that truly represent in your opinion the amount of unsuitable land for cultivation in that district?

A. Yes sir.

Q. There appears on the map nine sections?

A. Yes sir.

Q. Does that mean there are nine square miles in the section?

A. Nine square miles in division A, yes sir.

Q. I wish you would describe the character of soils, types of crops in that sub-division A.

A. The character of soils and types of crops grown there is identical as in sub-division 3.

Q. The proposed highway passes through that sub-division, as shown on the map?

A. Yes sir.

260 Where is the natural market of the products grown in that square division?

A. The natural market would be for the southern portion of sub-division A Lockesburg over Road Number 3; it might come to De Queen, but it has a longer haul and wouldn't be justified except for better market conditions; the northern portion of sub-division A would go in all probability to De Queen over the Bankhead Highway, or marketed at Geneva on the De Queen & Eastern.

Q. What about the southern portion having a market at Horatio?

A. At Horatio, yes sir. The extreme southern portion of it should move to Horatio.

Q. The road is shown on the map as running through the south end of sub-division A, extending through Walnut Springs and through Norwoodville and over a north and south line to Horatio? Is that road there?

A. Yes sir.

Q. I wish you would describe sub-division B as shown on the map.

A. Sub-division B contains a total area of about ten square miles of sandy soil practically identical with the quality found in sub-division 2.

Q. There appears on the map as referring to sub-division B "25 per cent in cultivation." Is that the true amount, in your opinion, of the land in cultivation at the time that you were there?

A. Yes sir.

Q. There appears also "50 per cent available." Does that truly represent the amount of available land which may be cultivated and which is not now in cultivation?

261 A. Yes sir.

Q. There appears also "25 per cent unsuitable." Does that truly represent the land which in your opinion is unsuitable for cultivation?

A. Yes sir.

Question by the court:

Q. What is that?

A. It lies north of the De Queen & Eastern Railway and south of the northern boundary of the district.

Direct examination resumed:

Q. And extends east from De Queen?

A. Yes sir, through division A.

Q. To the northwest corner of sub-division A?

A. Yes, it goes over there until it strikes river bottom land. That is the reason for this division in here. This is a different type or soil entirely.

Q. Describe the surface of that division.

A. It is sandy soil, practically identical with the soils of sub-division 2 that were described a while ago.

Q. Where are the natural markets of that sub-division?

A. The western portion of it should market at De Queen and the eastern portion of it should market at Geneva.

Q. Over what highway at the time you were there can those products reach De Queen?

A. The Bankhead Highway comes along the northern boundary of that sub-division and would be the natural artery of travel for the products of that region.

262 Q. The Bankhead Highway runs for a number of miles along the northern edge of that division?

A. Yes sir.

Q. And over that highway that division, or that part of it near the highway, can get access to De Queen?

A. Yes sir.

Q. And that without using Road Number 3?

A. Without using Road Number 3 at all.

Q. I wish you would describe Division C.

A. Division C is that territory lying west of the Cosatot river south of the De Queen & Eastern Railway and north or northwest of an arbitrary line that is drawn on the map there to show a change in the type of soil and character of farming that is done.

Q. Sub-division C is shown on the map as you have described it?

A. Yes sir.

Q. Road Number 3 passes approximately southeasterly and near the center of that sub-division?

A. Yes sir, it passes through it in the direction of its greatest length.

Q. There appears on that sub-division the following, "percentages for cultivation suitable and unsuitable, 25 per cent suitable and 25 per cent unsuitable." State whether or not those figures show to your best judgment the land now in cultivation, the amount suitable and not in cultivation and the amount not suitable.

A. Yes, they do.

Q. What character of products did you find grown in that sub-division?

263 A. The same as in sub-division B and sun-division 2, the same character of soil, the same character of crops; corn, cotton and some sweet potatoes, and sorghum cane, and some watermelons.

Q. State whether or not the products from that sub-division without the road in controversy could have a short haul reaching the Bankhead Highway on the north and also a road on the southwest side of said sub-division C, as shown on the map.

A. Yes, some of them could.

Q. There is another road extending north and south, is there not, through that sub-division?

A. Yes sir.

Q. It reaches Geneva on the north and extends south?

A. Yes sir.

Q. What do you say with reference to the natural markets for the products of that subdivision?

A. The natural market for that sub-division with the road district that is there would in all probability be De Queen, with the possible exception of the extreme south end of it, which might go to Lockesburg. In fact I saw cantaloupes moving from Geneva to Lockesburg.

Q. State whether or not you found in your visit and examination through that road district any new lands that were being placed in cultivation.

A. Throughout the entire road district, you mean?

Q. Yes.

A. Yes, we found in divisions 2, B and C some small areas being placed in cultivation, apparently for the purpose of straightening lines or clearing out corners; and in one or two instances

264 some small patches of branch bottom land that was being placed in cultivation. No appreciable amount in that portion of the school district. In division 1 and D, I believe it is, we found no clearing going on at the time we were there, but a great many fields that showed to have been recently cleared, mainly planted in strawberries; and considerable evidence in those two districts of new lands being put in cultivation.

Q. Mr. Newson, state whether or not under your employment and your duties arising out of that employment with the Kansas City Southern it becomes a part of your duty to make a study of farm

products and the development of farms and the growth of farms and the development of the country on the line of road of the Kansas City Southern Railway?

A. It does. That is my business.

Q. Have you made a study of that subject?

A. Yes sir.

Q. How many years have you been engaged in it altogether?

A. I have been making a special study of agricultural matters for the past twenty years.

Q. In connection with that and in connection with the facts that you investigated and went over in this district, I wish you would state whether or not the construction of this road, in your opinion, will benefit the two miles of line of railroad of the Kansas City Southern Railway Company located in the district here at the western end.

A. Do you mean through increased traffic?

Q. Yes.

A. I don't think so.

Q. Why? State your reasons for it?

265 A. Well, the portions of this district that are producing the heavy traffic now, that is, sub-division 1 and sub-division D, have but a little more land to go into cultivation—probably five or ten per cent—and those lands appear to be going into cultivation, being cleared and put into strawberries. That is the strawberry growing area of this road improvement district—strawberries and cantaloupes, and lands suitable for those crops appear to be going under cultivation now as fast as the condition of the owners will permit apparently regardliess of their location with regard to good roads or other roads. In my judgment from those sub-divisions there can be an increased tonnage only from the placing of this additional five or ten per cent which is suitable for cultivation and not already in, or from an increase in the efficiency of the individual farmer—a higher production per acre—only two sources that I can see wherein increased tonnage could follow from those regions. As to the balance of the district the river bottom lands uncultivated in sub-division 3 and A there is not much additional land in those districts that is available for cultivation, and the same condition as to increased tonnage would apply there. The only increase that is possible, that is, the only source of increase that would be possible, would be the bringing in of all the available land within these areas that is suitable for cultivation, or an increased production per acre arising from an increased efficiency of the man doing the work. The balance of the district, being sub-division 2, B and C, do not appear to be developing. There is additional territory there that is suitable for cultivation but it does not appear at this time to be coming under cultivation, in my judgment, because its owners

266 do not consider it a profitable venture. The type of crops or type of agriculture that is being used there is not so profitable as it is in the other districts, and I think that those additional suitable areas in the sandy soils will come into cultivation when a variety of crops or a type of agriculture is found and used that will

prove sufficiently profitable to bring an additional investment necessary to put those lands in cultivation.

Mr. McDonough: That is all.

Mr. Edwards: We move to exclude all the evidence of this witness Newsom because incompetent, irrelevant and not bearing upon the issues before the Court. This evidence might be admissible if the Court was considering the advisability of creating or organizing an improvement district, but the district being already organized, it is a question of assessing the benefits, the issue here being whether there is any discrimination or confiscation of the railroad property, and I cannot see where it is competent for any purpose.

Court: I will let it stay in.

Mr. Edwards: Save exceptions.

Cross examination.

By Mr. Edwards:

Q. Mr. Newsom, how many days were you engaged in making that survey and obtaining the data from which that map was made?

A. There were three of us at work on it three days.

Q. Can you state to the court that you have personal knowledge about all the matters about which you have testified, or is it information you have obtained from other sources and from other parties?

267 A. Just what matters do you refer to?

Q. As to the accessibility of a certain section to a certain market, as shown on the map?

A. Yes, I think I have personal knowledge of that.

Q. As to the percentage of land that is in cultivation, the percentage that is suitable for cultivation and the percentage that is unsuitable for cultivation, have you personal knowledge sufficient to state with any degree of certainty that this map is correct and the figures on that point are accurate?

A. That is only offered as an estimate.

Q. Purely as an estimate?

A. Based on the best judgment that we could formulate after looking the matter over.

Q. Now, in several instances you spoke of Geneva as being the logical point to market the different products of those sections adjacent to that Geneva territory. Are you familiar with the market at Geneva as to whether or not they have a market there, as to whether or not they have a depot there or railroad agent there?

A. I believe it is a box-car; I think it is.

Q. Now, just answer my questions as you come to them. Do they keep a depot there?

A. I don't know.

Q. Do you know whether there has ever been any buyer there for strawberries?

A. No sir, I do not.

Q. Cantaloupes?

A. I do not.

Q. Cotton?
268 A. I do not.
Q. Sweet potatoes?
A. I don't know.
Q. So far as you individually know none of those products of that territory are marketed at that place?
A. So far as I know personally I don't.
Q. It is your opinion, as stated on direct examination, that there cannot be any great increase in traffic and tonnage due to the fact that a relatively small per cent of the land is yet to be improved and put in cultivation?
A. That is one reason.
Q. I will ask you if a change of crops from cotton, corn and sorghum cane to that of cantaloupes, watermelons and sweet potatoes would not of itself increase the tonnage from this territory?
A. If a change were made in the territory that is adapted to the production of those crops and the crops were intelligently handled, that is true.
Q. It would increase the tonnage?
A. Yes sir.
Q. Mr. Newsom, it is desirable that strawberries, cantaloupes, watermelons, blackberries, beans and other perishable crops can and should be handled without being bruised and jolted any more than possible?
A. Yes sir.
Q. Then, in your opinion, wouldn't the improvement of roads and highways necessarily be an incentive and encouragement to the growing of those products—cantaloupes, strawberries, black-
269 berries and watermelons?
A. Not necessarily, no.
Q. Do you think it would incidentally?
A. Well, that would depend.
Q. What has been your observation along that line?
A. My observation along what line?
Q. Do not good roads encourage the growing of truck and all those perishable crops where they have not been grown before, due to the fact that they are made accessible to a good road?
A. No sir, my observation is that they do not. Of course in case of a region that is inaccessible the building of roads would encourage production there.
Q. Since you have been employed as agriculturist for the Kansas City Southern Railway Company has that railroad company run an exhibit car—an exhibition car—into this section of the territory, exhibiting the different products grown in this section?
A. No sir.
Q. Not since you have been employed by it?
A. No sir.
Q. I will ask you if the Kansas City Southern has advertised this territory, calling attention to the good roads and the various products in the way of truck that are grown in that section?

Mr. McDonough: That is objected to as not cross-examination, and because if the Kansas City Southern has done anything of that kind, the best evidence would be to get the parties who did it.

Court: Yes, unless he knows of his own personal knowledge.

A. I don't know.

Q. Is it a part of your business to go into these localities
270 and organize truck growing associations, peach clubs or any kind of agricultural clubs?

A. Yes sir.

Q. That is done with a view of obtaining more traffic for the Kansas City Southern Railroad, is it not?

A. Yes sir.

Redirect examination:

Q. You may have answered the question before, but in view of the cross-examination I want to ask you what effect, if any, the transportation of perishable fruits and vegetables over any considerable distance of even good roads has on the market value of those products?

A. It injuries the product to haul it any; they should reach refrigeration at the earliest possible time, and by the shortest possible haul.

Q. Taking into consideration your knowledge and experience of the development of farm lands, I wish you would state whether or not in even those countries that are considered developed to a high point of development there still remains some of the land which is not placed in cultivation.

A. Oh yes.

Q. In a state like Missouri, for example, about what percentage, if you can tell, of the land even in the best developed counties—those suitable for cultivation—is not yet in cultivation?

A. I never tried to make an estimate of that.

271 Q. At any rate there is some, is there not?

A. Yes sir, there is some five or ten per cent anyway. That would depend on the type of farming that is being done. Take out in the fruit growing area or livestock section and the general farming section and you will find a percentage of the usable farming land not in cultivation.

Q. Is it not true in a country where there is timber most farmers generally leave a part of their land in timber and preserve it for getting the timber for uses on their farm?

A. Yes sir.

Re-cross examination:

Q. From your own personal knowledge are you able to say that the territory here in sub-division B and sub-division C on this map is more accessible to the Bankhead Highway than it is to Road Number 3?

A. No, I don't think I stated that.

Q. I asked you if you know that it is. Have you that personal knowledge that you can state that the products from this territory would be marketed from the Bankhead Highway in preference?

A. Which territory did you say?

Q. I will say C.

A. No sir, I said products in division C should reach De Queen over Road Number 3.

Q. Are you in position to state whether or not this territory here in the eastern part of sub-division B—the eastern end of that territory—would not be more accessible to Road Number 3 than it would be to the Bankhead?

272 A. It would be a question of distance.

Q. Wouldn't it be a question of accessibility?

A. There is not much difference in the accessibility. It is about as hard to get to one of those roads as it is to the other.

Q. I will ask you this question. Do you know whether or not the De Queen & Eastern railroad is considered as a permanent railroad of the country, or is it generally considered as a log road?

A. My impression is it is considered as a permanent road.

Q. In the event that road should become abandoned as a railroad, assuming that, what then would become the value of this Road Number 3 to the Kansas City Southern Railway?

Mr. McDonough: I want to object to that on the ground it is going into probabilities, and is immaterial, irrelevant and incompetent. We might as well assume that sometime in the future the Kansas City Southern Railway Company might be scrapped and abandoned.

Court: I have heard of log roads being done that way but not roads like the Kansas City Southern.

Mr. McDonough: The Kansas City & Memphis was a road of sixty miles and considered at one time a very fine road in North Arkansas, and it has been scrapped; and the M. D. & G., I magine, will be scrapped pretty soon.

Court: Go ahead. Let it go for what it is worth.

Mr. McDonough: Save exceptions.

To the ruling of the court the defendant at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Well, Lockesburg as a market would be destroyed and the perishable products that are flowing into Lockesburg would
273 probably cease to be grown and the farmers would throw their attention to some other line of farming. The perishable products grown in sub-division 1 would probably not be grown, and in case Lockesburg as a market should be destroyed that would be my judgment on it.

Q. Why do you think that the farmers would cease to grow these products rather than haul them to De Queen over an improved highway a distance of some ten or fifteen miles?

A. Because generally it is not an economical proposition to haul them over ten miles. The western part of the district would probably remain in production, but I think that the bulk of it would not.

Q. Don't you know that during the spring of 1921 that the strawberries grown in and around Lockesburg, south of Lockesburg and east of Lockesburg, were marketed at De Queen and hauled here by trucks?

A. No, I don't know it; it may be true.

Witness excused.

274 E. W. MORGAN, called by the Plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. You are in the employ of the Kansas City Southern Railway Company?

A. Yes sir.

Q. In what department?

A. I am assistant engineer.

Q. Where is your place of location?

A. Pittsburg, Kansas.

Q. How long have you been an engineer?

A. I have worked with the Kansas City Southern eleven years.

Q. During all that time in the engineering department?

A. Yes sir.

Q. Were you with Mr. Newsom in making this survey of Road Improvement District Number 3?

A. I was.

Q. Did you assist him in making the map that has been introduced in evidence as Exhibit A to his testimony?

A. Yes sir.

Q. I wish you would state whether or not the streams, roads, towns and other things shown on that map are shown there with fair and reasonable accuracy.

A. They are.

Q. Did you make or assist in making the estimates as to the amount of land in cultivation and the amount of land not in cultivation and the amount of land that is unsuitable for cultiva-

275 tion?

A. Yes sir.

Q. Are the figures shown on that map, in your opinion, a true representation of the percentages of the lands in cultivation, lands suitable and not in cultivation, and land unsuitable for cultivation?

A. As an estimate it is accurate.

Q. You know where this road is located and where it comes into the town of De Queen, do you?

A. Yes sir.

Q. State whether or not the construction of that road as laid out will in any way tend to drain or help the roadbed of the Kansas City Southern as to drainage.

A. Do you mean to say whether it would interfere with the drainage of the Kansas City Southern?

Q. No, whether or not it would help to drain the roadbed in any way?

A. I don't see that it would benefit the railroad track any by drainage.

Q. Mr. Morgan, you are familiar with Sevier County here and this road improvement district, are you not?

A. I am familiar with that part of it.

Q. You know where the road district is located?

A. Yes sir.

Q. And you know how the Kansas City Southern runs through this county?

A. Yes sir.

Q. You have been with the road something like eleven years, I believe?

276 A. Yes sir.

Q. Is it a part of your duty as an engineer to study the subject of assessments or benefits that may or may not arise to our property by reason of the construction of highways?

A. In a small way.

Q. Have you given the matter study?

A. I have given this particular one study.

Q. I wish you would state whether or not in your opinion, taking into consideration everything in connection with this road, the said road will or will not benefit the property of the Kansas City Southern Railway Company as to the two miles of road within the district.

A. No, I can't say that it will benefit it.

Cross-examination.

By Mr. Edwards:

Q. This map introduced here is not made from an actual survey of the territory, is it?

A. Not with an instrument, no; it is a section-line survey.

Q. It is drawn from your estimate, and only intended as an estimate? Is that correct?

A. The map is correct from section lines.

Q. I have reference as to the directions in which the roads run and the locations of the towns, the amount of land in cultivation and that not suitable for cultivation. That is purely an estimate, isn't it?

A. The land in cultivation is an estimate.

Q. Will you state the towns designated on the map, as you have here, — are located at those points in Sevier County?

277 A. No, I can't say exactly; I didn't go into that; that is out of the district.

Q. Do you know what section, township and range the town of Geneva is located in, and whether or not that is the correct location, as shown on this map?

A. That is approximately so.

Q. You have simply estimated the matters shown in this map, have you not?

A. Well, I obtained the location of the roads from the section lines in driving over it; the town the approximate location with reference to that.

Q. Did you draw this map yourself?

A. Yes sir.

Q. I will ask you if you got information and data from other maps of the county?

A. I obtained the location of Road Three from the engineer who had charge of it.

Q. These other roads marked on here as laterals where did you get that location and that information?

A. Just from driving over it and from the section lines.

Witness excused.

278 GEORGE HELME, called on behalf of the plaintiff being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. Where do you live?

A. Texarkana.

Q. In what business are you engaged?

A. I am general agent at Texarkana.

Q. For the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company?

A. Yes sir.

Q. As general agent what are your duties generally?

A. Looking after the movement of freight, and trying to locate new business and taking care of the business we are handling, quoting rates, and looking after the interest of the company in every way possible.

Q. State whether or not in the discharge of your duties you make a study of the nature of the freight to be hauled, the point of origin of it, and the chances of its coming to the Kansas City Southern line.

A. Yes sir.

Q. How far is De Queen from Texarkana?

A. Fifty-five miles, I believe.

Q. Have you been over this Road Improvement Number 3 yourself?

A. Not personally.

Q. Do you know where Lockesburg is?

A. I do.

Q. And do you know where Horatio is?

279 A. Yes sir.

Q. Are you familiar with the line of railroad known as the Memphis, Dallas & Gulf?

A. Yes sir.

Q. That is shown on this map, marked "M. D. & G.," is it not?

A. Yes sir.

Q. Mr. Helm, state, if you know, about how far it is from the east end of this road in controversy to Nashville, Howard County?

A. In the neighborhood of fifteen miles, I believe.

Q. On what railroad is Nashville, Arkansas?

A. The Missouri Pacific and the M. D. & G.

Q. The Missouri Pacific Railroad Company is a large system of railroads, is it not?

A. Yes sir, one of the largest in the west. It operates a branch line from Nashville to Hope.

Q. In the discharge of your duties in looking after matters of traffic, state whether or not you study the question of the transportation of traffic, such as small fruits and vegetables in small lots from the farms where produced and the stations where they are shipped on railroads.

A. Yes sir.

Q. I wish you would describe the general character of the farm products that are received at the stations of De Queen, Arkansas, Horatio, Arkansas, Winthrop, Arkansas, and the neary-by stations on the Kansas City Southern Railway.

A. Well, we have strawberries, blackberries, beans, cucumbers, cantaloupes, watermelons, sweet potatoes.

Q. Have you given the subject of the production or in-
280 creased production, if there should be such, any study, due to the building of this road through this road improvement district?

A. Yes sir.

Q. I wish you would state to the court whether or not, in your opinion, there would be any substantial increase or any increase of farm products brought to De Queen direct from the farms and turned over to the Kansas City Southern Railway Company by reason of the construction of this highway.

A. I can't see any.

Q. Give your reasons.

A. The movement now from that territory east of the Cosatot is in to Lockesburg, and west of the Cosatot the movement is into De Queen or Horatio; and the building of this road isn't going to change that one bit.

Q. What is your opinion as to whether or not, taking everything into consideration, the two miles of line of the Kansas City Southern Railway Company will receive any increase in traffic by reason of the construction of this road?

A. None.

Q. State your opinion as to whether or not, then, the construction of this highway will benefit the two miles of railroad of the Kansas City Southern.

A. Not a particle.

Q. I wish you would describe to the court the method of handling perishable fruits and vegetables, and whether or not they can be

handled in wagons and vehicles for any distance; and if so, how far. Just state fully your knowledge and information on that matter.

A. In wagons and vehicles the movement should not be
281 over nine miles; in trucks a little greater distance, but they should be taken to the first shipping point—the nearest shipping point where there is a market that handles that commodity, and they should be put in the cars with the least possible delay because they want to get to their destination in the best possible shape. These commodities are all handled in special cars. The equipment of cars have to be moved to the shipping point or the initial icing point empty; they have to be given special movement and re-iced after being loaded; ordinarily they have to be re-iced every twenty-four hours until they reach destination.

Cross-examination.

By Mr. Edwards:

Q. Don't you know that since the highway improved by Road Improvement District Number 1 has been constructed that the country along that highway in Sevier County has been changed from a corn and cotton country into one of berries and truck?

A. No, we have handled melons and strawberries out of Horatio for a number of years, and your movement out of De Queen in 1920 was less than it was in 1919.

Q. What about prior to 1915, the year in which that road was constructed?

A. I don't go back that far, but in 1917 no business and 1918 no business.

Q. Then, it started in 1919, didn't it?

A. 1919.

Q. I will ask you if you know or knew of a single truck
282 farm or berry farm north of De Queen in that territory penetrated by Road Improvement District Number 1 prior to the time that road was built or constructed; do you know of a- one there in that territory in Sevier county?

A. Yes sir, we handled business from Gillham—strawberries and grapes from Gillham for years.

Q. I will ask you from King, Arkansas, to De Queen, Arkansas, in that territory now from De Queen, Arkansas, to King, Arkansas—if prior to the construction of that road there were any truck farms or berry farms in that territory?

A. I have no information of that.

Q. Your opinion that the railroad property will not be benefited by reason of the improvement in this district is based almost entirely upon the proposition that the traffic to the railroad will not be increased, is that true?

A. That is the reason; yes sir.

Witness excused.

283 J. O. HAMILTON, called by the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. Where do you live?
A. Texarkana, Texas.
Q. What business are you in?
A. I am the assistant general freight agent of the Kansas City Southern Railway.
Q. How long have you been with the Kansas City Southern Railway Company?
A. Ten years.
Q. Generally, what are your duties?
A. I am in the Traffic Department. Those duties consist of soliciting traffic, making the rates on it, co-operating generally with the Transportation Department, and dealing with the public in general.
Q. State whether or not King and De Queen and other towns in this district are in your jurisdiction?
A. They are.
Q. State whether or not you have, by reason of that, given the matter of the transportation and production, or, rather, the production and transportation of farm products a study.
A. I have.
Q. You know, generally, do you, where this road district is located?
A. Yes sir.
284 Q. Number 3?
A. Yes sir.
Q. You know where Lockesburg is?
A. Yes sir.
Q. I wish you would state whether or not, in your opinion, Mr. Hamilton, taking into consideration the possible or probable traffic that may arise, and all other matters in connection with the question of traffic and increased traffic, whether or not the construction of this road, in your opinion, will increase the value of the property of the Kansas City Southern so as to be a benefit to that property located here in the western end of the district.
A. I do not think the construction of the road will increase the volume of traffic moving over our road.
Q. In your own way I wish you would give your reasons for that.
A. In the increase of traffic, we will take, first, for consideration berries and cantaloupes, the inevitable law of supply and demand is largely at work there. As the cities grow larger and the inhabitants of these cities become more adapted to the use of fruits and melons there will be a larger production. That will result whether a road like Road Number 3 is constructed or not. Further, the marketing of these products comes at a season of the year—that is

summer—that is composed largely within six weeks, when it is essential that the movement of those products shall be brought over as short a distance as possible to the railroad line where the refrigerator cars are available. Now, in the movement of those products from the territory east of the Cosatot river, Lockesburg would be the point of shipment. The rates, I might say, on fruits,
285 vegetables and melons from Lockesburg are the same as from De Queen to a large consuming section of the United States.

Q. Give those sections.

A. Chicago, Detroit, Toledo, Cleveland, Columbus, Indianapolis and Pittsburgh as representing territories. As you get farther west, that is, like Kansas City, Saint Joe, Dennison, Omaha and a certain section of Iowa the rates from Lockesburg are a slight bit higher than De Queen—some few cents that doesn't amount to very much per car. The rate of refrigeration, that is, the charge for the using of the car from Lockesburg, or from any point on the De Queen & Eastern, is the same as from De Queen to all these territories. So, therefore, the economic proposition in marketing these products—. that is, melons and vegetables—is to get them to the nearest point as soon as possible, and that is Lockesburg; and the rates I have stated are practically the same. So there would not be an incentive in bringing those products to De Queen when the rail rate is practically the same from De Queen & Eastern stations as from De Queen. Now, as the territory west of the Cosatot river, the movement is either to Horatio or De Queen, except possibly some that might be just over the border on the western side that would be to Lockesburg, and there are available roads there to both these places —De Queen and Horatio—at the present time. Now, in the movement of other commodities—let's take, say, potatoes and peanuts—they have been mentioned, I believe as commodities—that could be produced in that section they could be marketed of course at points other than those reached by Horatio. Let's take, for in-
286 stance, peanuts. There is a demand for those at Texarkana, Texas, that would be in connection with our roads, but also competing with Texarkana there are very formidable houses at Dallas and Fort Smith, and that movement from the De Queen & Eastern territory would be over the rails of that line through Valiant and the Frisco, which is the Frisco line from Valiant to Dallas and Fort Worth. That situation is also comparatively true with reference to sweet potatoes. There is a demand for those, not only in the territory served by our line, but also in Texas—Dallas, Fort Worth, Wichita Falls, and that section of Northwest Texas, which would also be served from the De Queen & Eastern territory by their rails through to Valiant and thence over the Frisco.

Q. Mr. Hamilton, if there was at present in this District Number 3 uncultivated lands which are susceptible of cultivation amounting to, say, from 10 per cent to 20 per cent, or even 25 per cent of the cultivation, and covering a period of twenty years from this date, state whether or not in your opinion the construction of this road will add any appreciable increase to the traffic of the Kansas

City Southern Railway Company from the construction of the road, not considering other causes for development but the road alone.

A. Only considered from the construction of the road alone I should say it would not be of increasing value to our company.

Q. Are you familiar with the traffic received by us, say, at a station like Winthrop, a station without a hard-surfaced road, whether the increase there has or has not been even more than other stations where there are hard-surfaced roads?

Mr. Edwards: That is objected to unless he knows whether
287 there is a hard-surfaced road at Winthrop.

Court: Yes.

Q. Do you know whether there is a hard-surfaced road at Winthrop?

A. No sir, I do not.

Mr. McDonough: I will have to call another witness on that.

A. I can answer that in that section, though, there has been an increase in our fruit and melons from Winthrop.

Q. Covering what period of time?

A. That has been developed within the last year or two; last year, I believe, was the highest they have had from there.

Q. Mr. Hamilton is it possible for the K. C. S. Railway to receive benefit from the building of the highway in District Number 3 in any other manner than through increased earnings?

A. If there is, I don't know it.

Q. Are you familiar with the operating ratio on the K. C. S. railway?

A. In a general way.

Q. If we were to assume that there would be an increase in gross revenues, amounting to a thousand dollars, approximately what percentage of that would be net?

A. Something like 23 per cent, if I remember correctly.

Q. Do you happen to know about what percentage of the total gross earnings of the Kansas City Southern system is represented by the fruit and vegetable shipments?

A. Yes sir, something like three and sixty-three hundredths per cent.

Q. Does that percentage include a very large movement of bananas and canned fruit?

288 A. It does.

Q. So that, as a matter of fact, the revenue derived from the movement of fresh fruit and vegetables would be very much less than three and sixty-three hundredths per cent?

A. It would. We enjoy a heavy banana business coming from New Orleans imported from there by various fruit companies to Shreveport; then to the K. C. S. with its connections to various lines in Oklahoma and further by our line to Kansas City, where we deliver to such roads as the C. B. & Q. and Union Pacific.

Q. Are shipments of strawberries and cantaloupes what are called season shipments?

A. They are.

Q. That is to say, they extend over a comparatively short period of time in a year?

A. Yes sir.

Q. Are shipments of that kind as valuable to the railway as staple goods shipments which last the year round?

A. They are not.

Q. Has it been your observation that the building of hard-surfaced roads and the connecting up of such roads into wide-spreading systems of highways has a tendency to furnish an element of competition to the railways?

A. They do.

Q. Does that restrict their earnings on short-distance hauls very materially?

A. It does.

Q. Do you have any knowledge of any movement or agitation throughout the country to urge upon the people the neces-
289 sity of building highways as a means of enforcing freight reductions? Have you ever heard that agitated?

A. I don't recall particularly that I have.

Q. But you do know on short-haul stuff the existence of systems of highways has a tendency to defeat the railways out of that class of business?

A. I do.

Cross-examination.

By Mr. Edwards:

Q. It is your opinion that the increase in production is going to be made only as there is an increase in demand, I believe you stated?

A. That is one of the primary reasons that I have in mind in connection with them.

Q. It is your opinion that that increased production is going to come in localities that have no good roads and no facilities for handling those products the same as it does in territories that is improved by hard surfaced highways, is it?

A. Well, roads that are more accessible, are bringing in more traffic in that way, but I could not say in this particular instance that the building of this road would increase that particular production.

Q. Are you familiar with the territory embraced in that district?

A. In a general way.

Q. Have you been to Lockesburg or any part of that territory east from De Queen?

A. I have never been over that road, no sir.

290 Q. You don't answer my question directly, but you say so far as you know it would not increase?

A. Yes, that is as definite as I could be in that.

Questions by the Court:

Q. Now, I suppose, you understand that this road extends some seven miles east of Lockesburg?

A. Yes sir.

Q. Now, if those people living on that road in the truck business and fruit business bring their truck out there to Lockesburg and put that on the train there and that is hauled and put on the Kansas City Southern doesn't that give you some relief there?

A. To the extent that it would be more business.

Q. More business would make more money? Your money is made to some extent by the business you handle?

A. It is.

Q. Say Lockesburg had a hard road running north and south connecting with this road running east wouldn't that make Lockesburg a better shipping point and encourage parties down there to plant more truck and things of that kind to ship out on the road to reach the Kansas City Southern?

A. I couldn't say that.

Q. For instance, this year there has been over two tons of bean seed shipped to Lockesburg that was available to those four roads, which is something that has never been done before. Do you think that will help your road?

A. If they have good growing conditions and there is a suitable market for them that will mean an increase of business.

Q. Hasn't there always been a market for those things?

291 A. Sometimes the markets have been quite disappointing.

Q. Cotton is disappointing too, sometimes, I guess?

A. Very much so.

Q. If this year the enterprising people there have shipped out two cars of hickory-nuts at two thousand dollars for each car, don't you think that would bring more business to the railroad?

A. Yes sir.

Q. So then, good roads are not a detriment to the railroads where they don't run parallel with them?

A. That depends. If those roads are linked up with others—

Q. Say they are not linked up, they run out here and stop on the Choctaw line and don't connect with any other, do you think that would be a detriment to your road?

A. It more than likely will in connection with other lines.

Redirect examination:

Q. If there was a road connecting the eastern end of this road in District Number 3 with Nashville where the Missouri Pacific Railroad Company was reached, and if that was a connecting highway and if these highways invited the transportation of products, then there would be an opportunity for all the products from Lockesburg east to go to the Missouri Pacific, wouldn't there?

A. Yes sir, Nashville being somewhat of a progressive little town over there, there would be quite a business.

Question by the Court:

Q. I will ask you if you know whether or not a good deal of the Howard County trade now east of the Saline river is shipped over your road east of the Sevier County line in western Howard County doesn't come over this road?

292 A. I don't know.

Recross-examination:

Q. Don't you know there is no improved road leading anywhere from this territory, leading from any part of this district into the western part of Howard County and leading toward Nashville and the Missouri Pacific Railway stations?

A. I don't know the shape of the railroads over there.

Witness excused.

293 JACOB BROWN, recalled by the plaintiff, previously sworn, testified further as follows:

Examination by Mr. McDonough:

Q. Have you ever traveled from the eastern end of this road on the Saline river to Nashville, Arkansas?

A. Yes sir.

Q. There is a highway running across there, isn't there?

A. Not a graded highway; not a hard-surface road.

Q. There is a highway that has been there?

A. There has been a wagon road there since I have been here.

Q. From the time you can remember there has been a wagon road there, hasn't there?

A. For the last fifteen or eighteen years was about the first time I was ever over it.

Q. Whatever development there has been in that country has been with that road they have got? They haul stuff over it, don't they—cotton and other products?

A. I presume they do.

Q. Isn't Nashville one of the best cotton markets in southwest Arkansas?

A. I don't know; I haven't been in the cotton business for years.

Q. At the time this road in District Number 3 was projected, is it not true there was a proposition on to build a public highway—hard-surfaced road—from the eastern end of this road, connecting it with Nashville, where the Missouri Pacific Railway Company had a line?

A. At the time we were pushing this Road Number 3 in
294 De Queen I think there was talk to that effect.

Q. And you made these assessments upon that belief, didn't you?

A. No, we didn't do that.

Q. Did you take that into consideration in making these assessments?

A. No sir.

Q. Had they started a road over there?

A. I think not. Where I got my information was through the Chamber of Commerce where we had our meetings in regard to the road.

Q. You don't know what they have done over there, whether they have looked to the building of the road from the eastern end of this line to Nashville, Arkansas, or not?

A. No, I don't know.

Recross-examination.

By Mr. Edwards:

Q. I will ask you if the talk you had wasn't that you expected a road to be built from the eastern end of this line to Centerpoint in Howard County, and not to Nashville?

A. Well, I don't know what point was to be the terminus over there.

Q. Did you ship any peanuts, potatoes or other products out of this county?

A. I shipped peanuts.

Q. Do you buy any peanuts in Lockesburg coming from the eastern territory of this district?

A. Yes sir.

Q. Do any of those peanuts come from the western part of
295 Howard County?

A. I am told that they do.

Q. Over what road are your peanuts routed when you ship them from Lockesburg?

A. Over the De Queen & Eastern and the Kansas City Southern.

Q. What route do they take from De Queen over the Kansas City Southern?

A. I used to route them over the Chicago & Alton. I ship all my peanuts to St. Louis.

Q. You just leave it with the railroad company to route them either way they want to?

A. Yes sir.

Q. You do not ship any of your peanuts over the Oklahoma & Western, do you?

A. I never have.

Redirect examination:

Q. In shipping various articles that are shipped over the De Queen & Eastern and then over the Kansas City Southern, most of them are delivered to the Kansas City Southern and go to Chicago and other places in the northwest and northeast, do they not?

A. I presume so; yes. I get my bills of lading at Lockesburg.

Q. Clear through on the Chicago & Alton and other railroads?
A. Yes sir.
Q. You never attempted to assess the Chicago & Alton any benefits by reason of its traffic, did you?
A. No sir.
Q. You never got that far from home?
A. I never took in that much territory.

Witness excused.

296 S. G. DAVIS, called by the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. You are the agent of the Kansas City Southern Railway Company at Horatio in this county, are you?
A. Yes sir.
Q. How long have you been the agent of the company in this county?
A. A little over seventeen years.
Q. What are your general duties with reference to the company as to traffic, Mr. Davis?
A. Receiving freight and express matter for transportation and the delivering of same.
Q. In the discharge of your duties do you look into the matter of the origin of fruit and vegetables and other farm products?
A. Yes sir, I do.
Q. From what places, generally, do the farm products which are received and shipped at your station come—what neighborhood?
A. Mostly from the east and southeast; some from the west.
Q. Are there any hard-surfaced roads at Horatio?
A. Yes, we have two.
Q. Running in what direction?
A. There is one running north and south a general direction—it runs east about two miles before it turns north; then one in a westerly direction.
Q. Where does the majority of the products shipped from your station come, whether off of hard-surfaced roads or off of old-
297 time roads?
A. Old-time roads.

Mr. Edwards: That is objected to as incompetent, immaterial and irrelevant and has no bearing on the issues here.
Mr. McDonough: The reason it is admissible is we propose to show these new hard-surfaced roads do not create traffic; that is the object of it. It is to show they come and develop where there is no hard-surfaced roads and that it is the soil that tends to develop it more than the hard-surfaced roads.
Court: Go ahead, I am letting all these matters come in, but I

don't think it is pertinent to this case at all as to whether the assessment is arbitrary or not.

Mr. Edwards: Save exceptions.

Q. In your experience there of seventeen years, I wish you would state in your opinion, whether or not the movement of perishable fruits and vegetables can be accomplished any considerable distance over hard-surfaced roads.

A. Not successfully.

Q. Why?

A. On account of its having such a rough surface; it is hard on the stuff. For a short distance it would be all right if you have pneumatic tires, but you cannot haul it with solid tires.

Q. If you haul it with a solid tire it is such that it will injure it?

A. Yes sir.

Q. And in that damaged condition is it or is it not—the value of it lessened for shipment into a distant market?

A. It is lessened.

298 Q. Do you know whether or not there is any hard-surfaced road at Winthrop?

A. There is none.

Q. Do you know whether or not there has been an increase of business at Winthrop from vegetables, fruits and farm products?

A. There has been an increase the last two or three years.

Q. Where does that increase come from generally?

A. From around the vicinity of Winthrop there.

Cross-examination.

By Mr. Edwards:

Q. I believe you stated you were station agent at Horatio?

A. Yes sir.

Q. And have been there seventeen years?

A. Yes sir.

Q. Horatio for the last five or six years has done a big business in strawberries and cantaloupes, hasn't it?

A. Yes sir, but not as big as we used to do on some things.

Q. Up until recent years nearly all that stuff was raised east of Horatio, was it not, toward Walnut Springs?

A. East and in toward Frog Level.

Q. There have always been good natural roads in that vicinity?

A. Yes, you could get over them all right.

Q. Very recently the Jefferson Highway has been extended, there has been a bridge put across Little River, and there has been a highway built on the south side of Little River has there not?

A. It hasn't been completed but it is in process of being completed.

299 Q. A short time ago they put out a big strawberry farm across Little River?

A. The Horatio Berry & Truck Farm.

Q. I believe you have some stock in it?
A. Yes sir.
Q. That farm was not put there until the good roads were built, was it?
A. Yes, it was put there before.
Q. Was that put there before the Jefferson Highway was built?
A. It hasn't been built yet.
Q. Was that farm put out before that road was extended south to the bridge put across Little River?
A. Not before the bridge was put across.
Q. You mean the road hasn't been finished from the bridge out to the farm?
A. Yes, and never will be because it don't go by the farm.
Q. They haul those berries across that bridge and over the Jefferson Highway to Horatio?
A. Yes sir.
Q. How far do they haul them?
A. Eight miles.
Q. But for that bridge and the good road from Horatio it would be too great a distance to handle those berries successfully?
A. I would take them to Winthrop.
Q. They have a good road to Winthrop?
A. Just a plain highway.
Q. It is a good, smooth road?
A. It is just like any country road that isn't graded.
300 Q. Don't they get jolted up considerably and get injured?
A. Not when you haul them on a wagon with springs.
Q. I will ask you if they don't raise some truck over about Otis?
A. They raise cantaloupes over there, and some beans.
Q. How long have they been raising that?
A. About four years.
Q. They didn't raise them until they got a good road from Otis to Horatio, did they?
A. Not so much.
Q. Until they extended the good road south and west of Horatio practically all the truck grown around Horatio was east and southeast of the town?
A. Yes, and some north; the peaches were practically all north.
Q. The peach orchard has played out there north, hasn't it?
A. It is coming again.
Q. How long has it been since you shipped peaches out of that orchard?
A. Five years.
Q. The roads east of Horatio and south of Horatio are made, by nature, unusually good roads, are they not?
A. Not so good, but those people get over them all right.
Q. They haul their truck over them without damage, and have done it all the time?
A. Oh yes.
Q. Don't you know strawberries and cantaloupes too are hauled

to Horatio on trucks anywhere from 10 to 20 miles and received and shipped through over the Kansas City Southern?

A. If a truck is heavily loaded it has been done, but it always comes in in bad condition.

301 Q. How far is the farthest you have shipped?

A. Fourteen miles.

Q. They do bring them from Lockesburg over that road and ship them from Horatio?

A. Yes sir.

Q. Do you know John Wilder?

A. I don't believe I do.

Q. Don't you know John Wilder hauls strawberries and cantaloupes there a long distance of twenty-three and four miles on his truck and is received there at the same price as the others?

A. No sir, some of his stuff was turned down.

Q. Will you tell the court improved highways do not increase traffic in those towns through which the highways run? Will you tell the court that improved highways do not increase traffic into the towns through which they run?

A. In my opinion it does not.

Witness excused.

302 D. A. ATHERTON, called by the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. Are you an employee of the Kansas City Southern Railway Company?

A. I am.

Q. In what capacity?

A. I have charge of the freight and passenger statistics; the freight mostly.

Q. Do you have in charge the making of statistics as to the branch of earnings of various kinds of freight or transportation of various kinds of freight?

A. The percentage each commodity bears to the total?

Q. Yes.

A. Yes sir.

Q. Have you a statement which you have compiled, showing the percentages in that respect?

A. I have a partial statement.

Q. Covering what period of time?

A. 1915, 1918 and 1920.

Mr. Edwards: We object to it when he offers it because it is not a complete statement.

Mr. McDonough: I want to offer these statements in testimony.

Q. These were compiled by you, were they?
A. Yes sir.
Q. Are they correct compilations of data made from the records of the company?
303 A. They are.

Question by the court:

Q. I believe you stated a minute ago these were not complete copies of the records on these same items?
A. No, I didn't mean to state that; I say it is not a complete record of all commodities handled.

Direct examination resumed:

Q. It is a complete record of the commodities mentioned here, to wit, fruit and vegetables, citrus fruits, other fresh fruits, bananas, potatoes, other fresh vegetables, dried fruit and vegetables, canned fruit and vegetables?
A. Yes sir.
Q. Does it include all departments of vegetables and fruits?
A. Yes sir.
Q. Does it include peaches?
A. Yes sir.
Q. Peaches shipped in carload lots?
A. Yes sir.

Mr. McDonough: We offer them in testimony.

Statements referred to are here introduced, marked Exhibits A, B and C to the testimony of the witness Atherton, and read as follows:

Exhibit A to Atherton's Testimony.

"Statement showing this company's proportion of the revenue on fruits and vegetables handled over this road and on total freight handled and per cent that revenue on fruit and vegetables bears to the total for the years 1915, 1918 and 1920; also revenue earned on fruit and vegetables subdivided as shown below and the per cent that each subdivision bears to the total revenue earned on fruits and vegetables for the year 1920.

		Revenue.	Per cent of total freight.	Per cent of total fruit and vegetables.
Fruits and Vegetables	1915	$379,977.21	4.87	....
Total Freight	1915	7,801,954.52	....	....
Fruit and Vegetables	1918	473,901.71	3.69	....
Total Freight	1918	12,856,566.79	....	....
Citrus Fruits	1920	4,079.50	....	.65
Other Fresh Fruit	1920	182,459.16	....	28.96
Bananas	1920	196,714.31	....	31.23
Potatoes	1920	120,053.96	....	19.06
Other Fresh Vegetables	1920	51,911.94	....	8.24
Dried Fruit and Vegetables	1920	17,542.74	....	2.78
Canned Fruits and Vegetables	1920	57,190.97	....	9.08
Total Fruit & Vegetables		629,952.58	3.63	....
Total Freight		17,361,234.69	....	....

By request of Mr. F. M. Moore, General Solicitor. Kansas City, Mo., July 26th, 1921.

Approved: —— ——, Auditor. —— ——, Frt. & Pass. Accountant.

1 copy to Mr. L. J. Henaley.
1 copy to Mr. J. F. Holden."

The Kansas City Southern Railway Company (Including Texarkana & Ft. Smith Railway Company).

Statement Showing Number of Cars and This Company's Proportion of Revenue on All Carload Shipments of Fruits and Vegetables Waybilled by this Road from De Queen, Ark., Taken into Account During the Years 1915, 1918, *and* 1920.

	1915.		1918.		1920.	
	Cars.	Revenue.	Cars.	Revenue.	Cars.	Revenue.
January	.....	.....	1	$64.15	.....	.....
February	.....	.....	.....	.....	4	466.38
March	.....	.....	.....	.....	14	1,383.45
April	.....	.....	.....	.....	4	330.90
May	.....	.....	.....	.....	3	305.26
June	.....	.....	.....	.....	.....	.....
July	8	700.03	.....	.....	.....	.....
August	3	271.74	.....	.....	.....	.....
September	.....	.....	.....	.....	7	650.69
October	.....	.....	1	55.45	.....	.....
November	2	171.95	4	291.74	1	124.12
December	.....	.....	.....	.....	.....	.....
Total	13	$1,143.72	6	$411.64	33	$3,260.80

Kansas City, Mo. August 6th, 1921.

Approved: —— ——, Auditor. W. G. Buchner, Frt. & Pass. Accnt.

By request of Mr. F. H. Moore, General Solicitor.
1 copy to Mr. L. J. Hensley.
K—106.

The Kansas City Southern Railway Company (Including Texarkana & Ft. Smith Ry. Company).

Statement Showing Number of Cars and This Company's Proportion of Revenue on All Carload Shipments and *Fruit and Vegetables Received from the De Queen and Eastern Railroad, Taken into Account During the Years* 1915, 1918 *and* 1920.

	1915.		1918.		1920.	
	Cars.	Revenue	Cars.	Revenue.	Cars.	Revenue.
January	.....	.....	.....	.....	3	84.99
February	.....	.....	1	126.84	.....	.....
March	.....	.....	1	126.84	5	294.93
April	.....	.....	.....	.....	3	212.34
May	.....	.....	.....	.....	.....	.....
June	.....	.....	.....	.....	.....	.....
July	24	1,357.39	4	285.44	12	774.71
August	1	55.43	2	108.86	16	1,024.14
October	.....	.....	.....	.....	.....	.....
November	1	56.58	9	314.53	5	534.06
December	.....	.....	4	283.55	.....	.....
Total	27	$1,538.51	22	$1,417.26	47	$3,146.54

Kansas City, Mo. August 6th, 1921.

Approved: —— ——, Auditor. W. G. Buchner, Frt. & Pass. Acent.

By request of Mr. F. H. Moore, General Solicitor.
1 copy to Mr. L. J. Hensley.
K—106."

Witness excused.

307 J. O. HAMILTON, Recalled by the plaintiff for further direct examination, previously sworn, testified further as follows:

Examination by Mr. McDonough.

Q. Has there been an increase in the earnings of the Kansas City Southern during the early part of 1921 as compared with 1920?

A. Yes sir.

Q. Will you give us an explanation of why that increase has occurred?

A. Yes, in accordance with the terms of the Transportation Act of 1920, passed by Congress, the Interstate Commerce Commission was required to investigate the railroad situation and make report as to certain increases which seemed essential in railroad freights. The result of their investigation was handed down in about July, 1920, and known as Ex Parte 74 of the Interstate Commerce Commission, that required increases effective August 26th, 1920. Those increases covered the entire United States, and were in different territories in what is known as the Western Territory, which embraces our section exclusively—the K. C. S. and other lines; the increase was 35 per cent; in what is known as the Southeast Territory the increase was 25 per cent; in the Far East it was 40 per cent; and in the mountain territory, that is, west of Denver and in that territory it was 25 per cent. Now, where the traffic moved from one territory to another it was 33 and a half per cent. And that is the result of our earnings in the early part of 1921 as compared with 1920 as reflected in those increases.

Q. Does that increase in rates fully account for the increased earnings?

A. Yes, I guess it does.

308 Q. So that, as a matter of fact, the value of commodities has been somewhat less than it was in the preceding year, but the railroad companies have simply delivered more from them?

A. That is the idea.

Q. Isn't it a fact there is a continual pressure being exerted now in the reduction of rates?

A. Yes, in several of the commodities which move largely over our line—petroleum and its products; I think our volume of that traffic is something like 18 per cent. A reduction is being made and efforts being made to make further reductions. Just recently under an order of the Interstate Commerce Commission rates on grain and grain products are to be reduced. Instead of our receiving 35 per cent advance as based on the order of August 26th, 1920, we are to get approximately 17 per cent of that advance. Those reductions will take effect, I presume, within the next thirty years.

Q. Have you any knowledge of whether or not there has been an increase or decrease in the earnings for the month of September and October?

A. There have been decreases.

Q. Have those decreases been of considerable size?

A. They have; the exact figures I haven't at hand at this moment.

Q. Both months show a very pronounced decrease as compared with last year?
A. Yes sir.

Re-cross examination:

By Mr. Edwards:

309 Q. What about the months of July and August? Was there any decrease in the tonnage during those months?
A. I am not so sure about that. It was along about that time when the decrease commenced showing up on us.
Q. Will you tell the Court there has been any increase in the tonnage from Sevier County in the last two years as over previous years?
A. I couldn't state that definitely without access to the records.
Q. Don't you know as a matter of fact there has been a growing increase of tonnage over the Kansas City Southern railroad from Sevier County in the last two or three years?
A. I don't know that.

Witness excused.

310 O. CORNELIUSON, called by the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. What position do you hold with the Kansas City Southern Railway Company?
A. Superintendent of the Northern Division.
Q. How long have you been a superintendent with the company?
A. About ten years.
Q. How long have you been in the railroad business?
A. About thirty years.
Q. In what department, generally, have you been during the entire time?
A. Always in the operating or transportation department.
Q. As superintendent now you are engaged in the operating department of your company?
A. Yes sir.
Q. Your jurisdiction extends from what point to what point?
A. Kansas City to De Queen.
Q. Mr. Corneliuson, state, generally, what your duties are. Give the Court an idea what duties you perform.
A. I have charge of the movement of cars and trains, and handle the men engaged in doing that work; regulate the movement of trains, and look after the station service—employ those who are engaged around the stations in the transportation department, such as agent, telegraphers, clerks, truckers and the like.

Q. What products, generally speaking, are received by the Kansas City Southern at De Queen and shipped north over
311 that division?

A. I think lumber will predominate, and in season we have the cantaloupes and strawberries, and some other small fruits.

Q. To what markets do the strawberries, cantaloupes and other fruits go?

A. They cover a very wide range. I think we have shipped some cantaloupes to Denver; we have gone as far north as the twin cities, and northeast to Detroit, and east to Pittsburg, Cleveland and Indianapolis.

Q. By the twin cities you refer to St. Paul and Minneapolis?

A. Yes sir.

Q. The Kansas City Southern extends only to Kansas City north?

A. That is all.

Q. At that point whatever products go beyond are delivered to a connecting carrier?

A. Yes sir.

Q. If products are received at De Queen and shipped north, say to Minneapolis or St. Paul, the freight is divided between the Kansas City Southern under the tariffs and its connecting carrier from Kansas City?

A. Divided between the lines that carry the freight.

Q. Are you familiar with the location of Road Improvement District Number 3, the one in controversy here?

A. I have not been over it.

Q. But you have a general knowledge of its location, do you?

A. Relatively, yes sir.

Q. Have you given the matter of benefits to railroads from the construction of highways a study in connection with your
312 railroad business?

A. Yes, in a general way, and observation of what is going on along the line.

Q. State whether or not there is any possible way that a railroad may be benefited by the construction of a highway except upon the assumption that the construction of said highway will increase the traffic of the railroad company.

A. That is the only way in which I can see any chance for improvement, and the fact that it is a good thing all the way round to have nice roads in the community. My observation of new road projects is it takes traffic away from the railroad to the same degree that it brings new traffic to the railroad.

Q. State the reasons for it and why it is done, and how the traffic moves instead of moving over the railroad.

A. Whenever there is a new road system inaugurated the business men along the line find it profitable or feel it is profitable to engage trucks to carry their freights. I could give several instances of that over our own line.

Q. Where?

A. Out of Joplin south over the new roads that have been built in that locality in the last ten years, and out of Neosho south, as far as Siloam Springs, and there are trucks carrying freight out of Siloam

Springs over between Bentonville and territory formerly served by that little K. C. & M. road that was closed out several years ago. Those distributing houses up there, usually in the grocery line, employ trucks to carry their freight to nearby towns that are served by railroads. We have trucks operating out of Fort Smith parallel with the Kansas City Southern Railroad; we have trucks oper-
313 ating out of Kansas City parallel with three or four railroads down as far as Drexel, Missouri. They carry quite a little freight down into that farming country eve-y day.

Q. What effect, if any, does the construction of those roads have on the passenger traffic?

A. It has considerable effect in that respect too. Now, out of Joplin, for instance, there is a jitney line that makes regular trips—I presume five or six trips a day—which are made between there and Neosho, Missouri. They have at least a half a dozen cars engaged in that traffic; and also from Neosho, south down through Goodwin and Anderson; and as far as Siloam there are automobile lines engaged in carrying passengers up and down there over those good roads.

Q. From your study and experience and observation I wish you would state whether or not good roads—so called hard surfaced roads—create the development in a country, or whether or not they are the effect of development in a country.

A. I think they are part of the pioneering that has to be done in every community. Naturally they draw more people after the roads are built, but they come with the development of a country the same as any other improvement, such as school houses and everything else for public and general use.

Mr. McDonough: That is all.

Mr. Edwards: We move to exclude all the evidence of the witness, Corneliuson, because it is irrelevant, incompetent and immaterial, and has no bearing whatever on the issues being tried by the Court.

Court: I will let it go in.

314 Mr. Edwards: Save exceptions.

Cross-examination.

By Mr. Edwards:

Q. I will ask you if with this general development of the country you have just been talking about there doesn't come to the railroads an increase in business of the company and earnings of the railroad company.

A. I don't believe it brings about any earnings. It does bring about additional earnings, but I think that is off-set by the business that is taken away from the railroads.

Witness excused.

315 J. E. MURPHY, called by the plaintiff, being duly sworn, testified as follows:

Direct examination.

Br. Mr. McDonough:

Q. What are your initials?
A. J. E.
Q. What position do you hold with the Kansas City Southern Railway Company?
A. Superintendent of the Southern Division.
Q. Your jurisdiction extends from what point to what point?
A. De Queen, Arkansas, to Port Arthur, Texas.
Q. How long have you been with the Kansas City Southern Railway Company?
A. Sixteen years.
Q. Your jurisdiction, then, extends over the road from De Queen south?
A. Yes sir.
Q. That includes Horatio, Winthrop and the other points in Sevier County south of De Queen, and in Little River County also?
A. Yes sir.
Q. Mr. Murphy, in the discharge of your duties as superintendent, do you also study the origin of freight to some extent?
A. Yes sir.
Q. Are you familiar with the freights that are received by your company at places like Horatio and Winthrop?
A. Yes sir.
Q. Do you know whether there is any hard-surfaced road at Winthrop, or not?
316 A. There is none at Winthrop?
Q. I wish you would state whether or not the increase in your traffic has been greater at Winthrop or less than that at the stations where there are hard-surfaced roads.
A. It has been greater in most cases.
Q. Mr. Murphy, what character of traffic—I mean what kind of articles of commerce—moves over your road, say from De Queen south, or from the south to De Queen, generally?
A. Lumber and forest products of all kind; tar; rosin; oil; and fruit.
Q. The fruit includes what class of fruit? Bananas?
A. Bananas.
Q. To what extent are bananas shipped, in large or small quantities?
A. In some instances solid train loads, and others from five to ten carload lots, and we would have those trains from one to three or four times a week in the fruit season, which is now.
Q. In the matter of bananas, where are they received by our line?
A. At Shreveport, Louisiana.
Q. And they are carried north from there?

A. Yes sir.

Q. To various markets in the north?

A. Yes sir.

Q. Is there any way, in your judgment, by which a railroad property, including these two miles in this district out here or any other part of the railroad property, may increase in value by the construction of a road, except upon the basis that the building of the road will bring in additional traffic?

317 A. No, that is the only way we have at deriving revenue.

Q. Our only business is selling transportation, is it not?

A. Yes sir.

Q. Have you made a study of the question of whether or not the construction of this road in this district will increase the traffic of the Kansas City Southern?

A. Yes, to some extent I have.

Q. State in your opinion whether or not there will be any substantial appreciable increase in the traffic by reason of the construction of this road.

A. I don't think there will be; no sir.

Q. I wish you would state whether or not this road, as well as other railroads, are meeting with competition by reason of trucks and automobiles which use highways or new hard-surfaced roads.

A. Yes sir

Q. State any instance of that kind of which you may have knowledge in your jurisdiction on our line.

A. At the present time we are practically handling no merchandise whatever between De Queen and Horatio.

Q. How does it move?

A. Moves by truck from De Queen.

Q. That is in Sevier County?

A. Yes, right here.

Q. That competition has practically taken away the movement of all traffic between De Queen and Horatio and turned it over to the trucks?

A. That is, from De Queen to Horatio, merchandise and things of that kind.

318 Q. Are there any other instances of competition that you know of?

A. Yes, they haul truck from Texarkana to Ashdown. I have other instances of where they haul from Shreveport as far as Vivian, Oil City, Mooringsport.

Q. Taking into consideration your knowledge of the movement of traffic, its origin, and your knowledge of the Kansas City Southern and this road improvement district, I wish you would state in your opinion whether or not the two miles of road of the Kansas City Southern in that district here at the west end will receive any increase of value or so-called benefit by reason of the construction of the road.

A. No sir, I don't believe it will.

Cross examination.

By Mr. Edwards:

Q. The road you spoke of between De Queen and Horatio runs parallel with the Kansas City Southern Railroad, does it not?
A. Practically so.
Q. The road built in Number 3 runs east from the Kansas City Southern, and almost at right angles to it, does it not?
A. As I understand it, yes.
Q. This road in Road District Number 3 couldn't possibly be in competition with the Kansas City Southern in carrying freight, could it?
A. It will be.
Q. How?
A. By connecting up with cross-roads. It is only a matter of time until all local shipments is going to be handled by truck.
319 Q. Has it been connected up yet?
A. I don't know about that.
Q. Are there any steps being taken to connect it up?
A. Not that I know of.
Q. Your opinion it will be is purely speculative?
A. No, from experience that hard surface roads whether with or directly from your lines will eventually take all your local business.
Q. Then, pursuing that statement to its logical conclusion if the people build enough good roads that will put railroads out of business, will it?
A. It certainly will, only for long-haul stuff.

Questions by the Court:

Q. What is the cause of that? High freights?
A. No, people will get better and quicker service.
Q. They get it cheaper, don't they, too?
A. No, I understand the haulage is the same only they unload a man's freight at his door.

Cross-examination resumed:

Q. Do I understand trucks over this road can go quicker and give better service than over the railroads?
A. Freight going from here to Horatio, for instance, will go to the man's store and be unloaded, whereas if it went on a freight car it will leave here once a day on the local and be unloaded at the depot. Inland towns, of which there are many in this country, the truck will take it across the country to the inland towns.
Q. Then the trucks and good roads are making serious
320 inroads on the earnings of the railroad?
A. They are on my territory. On my territory right today I have inland towns we don't haul freight for only when it rains.
Q. Then, a good hard-surfaced road is by far better for the public than a railroad, isn't it?

A. For a short haul, yes, because you can run it any hour of the day.

Q. Then it is your opinion the public had better build railroads, had they not?

A. That is up to the public.

Redirect examination:

Q. The public should pay for the roads?

A. Yes sir.

Recross-examination:

Q. Isn't this competition with the trucks becoming acute only since railroad rates have become so high?

A. No sir, only since hard-surfaced roads have got so numerous and so good.

Q. But did they get so numerous and so good until these freight rates became so high?

A. Probably they came along the same time; they were coming whether the freight rates went up or not.

Q. How much have freight rates been raised on an average the last two years?

A. They have been raised some; however, I wouldn't want to say just how much.

321 Q. I am not asking you exact. How much, then, in the last three years?

A. They have been increased some, due to the high cost of everything.

Q. They have been greatly increased in the past five years, have they not?

A. Since the beginning of the war they have been increased; now they are being decreased.

Q. Since 1914 they have increased more than 66 and two-thirds per cent, have they not?

A. I don't know about that.

Q. Isn't that approximately correct on an average on all kinds of freight?

A. I couldn't say that.

Q. It is not less than that, is it?

A. I wouldn't want to say.

Q. This truck competition didn't become so bad until these rates became so high, did it?

A. About the same time; they all came here together.

Q. Then it is not really the dirt roads that is worrying you so much about taking your traffic away as it is the high freight rates, is it?

A. Yes, the freight rates are going down, and the trucks are going to stay here.

Q. And you think by that the railroads will have to go out of business?

A. They will so far as short-haul stuff is concerned.

Mr. Edwards: We want to move to exclude all the evidence given by Mr. Murphy as being incompetent, irrelevant and immaterial.
Court: I will let it stay. Mr. Edwards. Save exceptions.

Witness excused.
At this point plaintiff rested.

322 The defendant, to sustain its issues, introduced the following evidence.

E. S. BUYINGTON, called by the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Edwards:

Q. State your name, age and place of residence.
A. E. S. Buyington; fifty-five; De Queen.
Q. What is your business or occupation?
A. I am a civil engineer.
Q. State what experience you have had in the civil engineering business.
A. I have been in the business about thirty-five years.
Q. Have you ever held the office of County Surveyor?
A. Yes sir.
Q. State generally the kind of work and surveying you have been doing for the past ten, fifteen or twenty years.
A. It is a general engineering practice; I have worked for the Dierks office about ten years as engineer of that company, constructing spurs and land work and main-line work; and for the past three years I have been in the highway engineering.
Q. How many improvement districts in Sevier County have you surveyed as engineer?
A. I have had five improvement districts I worked as engineer.
Q. State to the court the character of improvements on Road Improvement Distrcit Number 3 on the bridges, culverts, road-beds and surveys.
323 A. We were building a standard highway under the Arkansas Highway Specifications, road bed twenty-two feet wide, gravel surface fourteen feet wide and eight inches thick, reinforced concrete culverts under the highway specifications, twenty-two feet in the clear, with all the reinforcements as shown in the plans and specifications, and were not exceeding a seven per cent grade and curves eliminated, that is, except in a few inches, two-hundred foot radius of curves in railroad parlance would be eight and ten degrees and twelve.
Q. In your opinion will the cost of the improvements exceed the benefits to be derived by the property owners?

Mr. McDonough: I don't see the relevancy of that. I object to it.
Court: I don't see right now the relevancy of it.
Mr. Edwards: I will withdraw it.

Q. On the property of the Kansas City Southern two miles of main track, nine and 75 hundredths miles of side tracks and buildings assessed for State and County purposes at $46,365.00, making a total valuation of the property assessed $123,615, the assessors have assessed a benefit of $21,270.00 to be collected over a period of twenty years. State to the court whether or not in your opinion that is an arbitrary assessment upon that property.

Mr. McDonough: That is objected to on the ground that it calls for a conclusion; second, on the ground that he shows no qualifications to pass upon the question.

Court: Of course it is calling for a conclusion. I don't know whether he has qualified himself by stating he has been an
324 engineer that long or not. I imagine it would. Go ahead.

Mr. Edwards: Wait a minute. I will qualify him.

Q. As an engineer for these improvement districts have you considered and given any study to the question of relative benefits to the property embraced in the district?

A. Naturally I have some.

Q. Now, from your study and from your experience and observation, state to the court whether or not you would consider that assessment of $21,270.00 as an excessive or arbitrary assessment upon the property of the Kansas City Southern embraced within the district.

A. I do not think so.

Cross-examination.

By Mr. McDonough:

Q. The record shows an assessment of $46,365.00 for buildings?

A. Yes sir.

Q. What are those buildings?

A. I suppose they are buildings within the district belonging to the K. C. S.

Q. I didn't ask you to suppose.

A. I don't know; I wasn't the assessor.

Q. You were the engineer with the assessor?

A. I didn't work with the assessor.

Q. One is the depot building, isn't it?

A. It is in the district, yes sir.

Q. Is the depot building in the district?

A. Yes sir.

325 Q. The depot building is a brick structure?

A. Yes sir.

Q. Cost approximately in your judgment what?

A. I should think that building cost eight or ten thousand dollars.

Q. It cost over twenty, didn't it?

A. I don't know.

Q. Were you not here when it was built?

A. No sir.

Q. The other building is the roundhouse where the engines are used in the operation of the road?

A. Yes sir.

Q. The depot building is on the right-of-way?

A. Yes sir.

Q. And the other buildings, so far as you know, are on the right-of-way?

A. Yes sir.

Q. They are buildings used exclusively for railroad purposes in the operation of the railroad?

A. I suppose so.

Q. What do you mean when you say that in your opinion the assessment of $21,270.00 against the property of these railroads is not arbitrary?

A. I mean this, that the building of the road and opening of a section of country out east of De Queen will naturally open up the country and bring more traffic to De Queen and to the K. C. S. railroad.

Q. That is what you mean by stating it is not arbitrary?

326 A. That is what I mean.

Q. The De Queen & Eastern Railroad Company runs from De Queen to Lockesburg, and beyond Lockesburg, does it not?

A. Yes sir.

Q. Road District Number 3 runs almost parallel with the De Queen & Eastern, does it not?

A. Very near it; that is as far as Lockesburg.

Q. The De Queen & Eastern brings products to Lockesburg and if they are going beyond De Queen they are now either delivered to the Kansas City Southern or carried on west over the De Queen & Eastern's connection?

A. I guess so.

Q. The only railroads in De Queen are the Kansas City Southern, the De Queen & Eastern from Lockesburg, and a connecting line with the De Queen & Eastern, which runs from De Queen southwest into Oklahoma?

A. Yes sir.

Q. Those are the only railroads connecting at De Queen?

A. Yes sir.

Q. The road that runs west from De Queen makes a connection with the Frisco Railroad Company at what point?

A. At Valiant, Oklahoma.

Q. How far is Valiant, Oklahoma, from the main line of the Frisco that runs from St. Louis into Texas?

A. It is possibly forty miles.

Q. Is Valiant east or west of Idabel?

A. Valiant is west of Idabel.

Q. Idabel is on the Frisco branch, running from Hope,

327 Arkansas, to Hugo, Oklahoma, isn't it?

A. Yes sir.

Q. That Frisco branch connects with the Frisco at Hugo, the main line of the Frisco at Hugo?

A. Yes sir.

Q. And that main line at Hugo is a straight line from there Saint Louis, is it not?

A. Yes sir.

Q. The Frisco also has branches leading to Kansas City, has it n

A. I suppose so; I don't know.

Q. You don't know as to that?

A. No.

Q. The products that are brought in over this highway then n be delivered to the line of road running west from the town of Queen, connecting at Valiant with the Frisco, and carried thence the northern markets?

A. In a roundabout way, yes.

Q. But they can be?

A. Yes sir, you could ship stuff via New York to San Franci too if you wanted to.

Q. That is your idea of fairness, is it, to ship it by way of S Francisco?

A. No, this would not be fairness around that way either, do seem to me like.

Q. A great deal of products that are grown in the western part Sevier County would naturally go to the Frisco road, wouldn't the

A. No sir.

328 Q. Do you think any of the products would go that way?

A. I should not think any of them would go.

Q. How far is it from De Queen to Valiant?

A. It is something near fifty miles.

Q. How far is it from Valiant to Hugo?

A. I think it is about forty.

Q. What is the distance to St. Louis from De Queen by way Valiant and Hugo and the main line of the Frisco Railway?

A. I sure don't know.

Q. What is the distance to St. Louis from De Queen by way the Kansas City Southern and their connecting line?

A. I never have made the trip; I do not know.

Q. Then, if products from De Queen were shipped over the r running from Valiant and thence to Hugo, they would go further they were destined to St. Louis than they would by being shipp from De Queen over the Kansas City Southern and changing lines Poteau and going thence over the Frisco to St. Louis, wouldn't the

A. I should think so.

Q. And the difference would be how much?

A. It is a guess with me, but I should think it would be a hund miles further.

Q. It is only, according to your statement, fifty miles to Vali and forty miles from there to Hugo?

A. That is ninety miles.

Q. You think, then, to ship by way of Hugo would be a hund miles further than to ship direct to St. Louis from De Queen o the Kansas City Southern and the Frisco?

A. That is my opinion.

329 Q. What is the distance to San Francisco?
A. I don't know.
Q. You don't think that your illustration that suggested of shipment by way of San Francisco to New York is a little extreme?
A. It is.
Q. Isn't it true that competing railroads often haul freights throughout this country, some fifty miles further, some a hundred miles further, at the same rate?
A. Sure.
Q. And it is not unusual and is customary for railroads and competing lines to take products fifty miles out of the way, or even a hundred miles out of the way, if they can get the long haul?
A. They do that, I think.
Q. You never operated a railroad?
A. No sir.
Q. Never have studied traffic conditions on the railroads?
A. No sir.
Q. Never have studied the means of railroads in securing business?
A. No sir.
Q. Have you ever constructed a railroad or aided in the construction of one?
A. I built this Texas, Oklahoma & Eastern part of it.
Q. That is the road that runs from De Queen to Valiant?
A. Yes sir.
Q. The name of that is Texas, Oklahoma & Eastern?
A. Yes sir.
Q. It is a connecting line with the De Queen & Eastern, isn't it?
330 A. Well, with the K. C. S. too.
Q. It was not built by the K. C. S. interests?
A. No sir.
Q. It was built by the De Queen & Eastern people?
A. Well, the Dierks people.

Mr. Isbell: We concede it was built by the same people as the De Queen & Eastern.

Q. Now then, as a railroad proposition, would it not be to the interest of the De Queen & Eastern and the Texas, Oklahoma & Eastern to secure a long haul for those two lines on every particle of those roads? Would it be to their interest to secure a long haul and take it to Valiant if they could?
A. Well, yes.
Q. And will not that consideration instead of taking all the freight over the Kansas City Southern have a tendency to influence some of that freight—all of it the De Queen & Eastern can influence—to go by way of Valiant?
A. I know nothing about the traffic rules and regulations, but naturally they would have to have an agreement with the Frisco people if they shipped stuff in order to get a long haul like that.
Q. Don't you think they would be likely to make an agreement with the Frisco people?

A. They would try to.

Q. It would be to the De Queen & Eastern's interest to get all the freight it could?

A. Yes sir.

Q. And get the longest haul it could?

A. Yes sir.

Q. Railroads have nothing to sell but their transportation,
331 have they?

A. No sir.

Q. And for all products moving through Western Oklahoma, Colorado, and even the Pacific States, moving from those states to De Queen and east they are just as likely to come over the Frisco and its connecting lines to Hugo, thence to Valiant, thence over the De Queen & Eastern to Lockesburg and other points east of here on the De Queen & Eastern?

A. That could be done.

Q. And products moving from Lockesburg to Denver and surrounding country could as easily go to Valiant and those points as they could by the Kansas City Southern?

A. I don't think they could go as easily.

Q. Why?

A. It seems like it is more indirect.

Q. You haven't figured it out yourself?

A. No sir. You told me what you thought about it, and I am telling you.

Q. Depends somewhat on the trains and freight?

A. That is something I don't know anything about.

Q. The only way that this highway could benefit the property of the Kansas City Southern Railway Company would be to give the Kansas City Southern Railway Company by development of the country increased traffic, would it not?

A. Yes, increased traffic in all lines.

Q. That is the only way it could be benefited, isn't it?

A. I should think it could be increased in another way; the development of the country would increase the value of the
332 railroad per mile, it seems to me.

Q. That would only be because it would get an increased business, would it not?

A. Increased business and increased population.

Q. That would bring an increased business?

A. Yes sir.

Q. Then, it all comes back to the question of increased business?

A. It would enhance the value of the line to have a thoroughly developed country.

Q. When you bring it down to the last point, the railroad is benefited, if benefited at all, only by an increase in the business it gets by reason of the development of the country?

A. And that boosts the value of the road.

Q. And, I say, that is the only thing, when you bring it to the last analysis, isn't that true?

A. Yes, sir, that is all right.

Q. Now, assuming that no increased traffic should come, the railroad wouldn't be benefited, would it?

A. If that was a fact, yes.

Q. If it is true that the railroad by reason of the regulation of rates by Congress and the State legislature had to haul an increased traffic at a loss, then the railroad would not be benefited, would it?

A. If they hauled at a loss, they wouldn't be; no.

Q. You know that the railroad company no more has the power to fix its rates, do you not?

A. They bring influences to bear by which they seem to be fixed.

333 Q. What do you mean by that?

A. Through the Interstate Commerce Commission and the big railroads. The rates are pretty satisfactory; have been, haven't they, lately?

Q. You mean by that the railroads influence the interstate Commerce Commission to act dishonestly in the matter, do you?

A. No, I don't mean that.

Q. What do you mean?

A. I mean they give them good rates.

Q. Still that doesn't answer the question. I asked you whether or not the railroads, as they formerly had, have the power to fix the rates?

A. They could get rates some way; I don't know how they fix them.

Q. I asked you if the railroad company was not now without power to fix its rates?

A. I don't know.

Q. Then, if you don't know that, how is it, that you know that they have good rates?

A. Because I have my opinion about it; and I know what people pay for shipping stuff.

Q. What is that based on?

A. Based on the rate.

Q. Based on your own personal experience?

A. Based on what different people paid for it.

Q. You couldn't figure out now in a shipment of strawberries or a carload of strawberries from De Queen to Chicago or from Lockesburg to Chicago what a reasonable rate would be, could you?

334 A. I could go look at the tariff rates and find out whether it cost more than the cars of strawberries was worth or not.

Q. Are you able to figure out what it would cost to transport a car of strawberries from Lockesburg to Chicago? Have you knowledge enough to determine what it would — a railroad to ship a car from Lockesburg, Arkansas, to Chicago?

A. No sir.

Q. Then you could not tell whether it was confiscatory or whether it was compensatory, could you?

A. Well, I don't know.

Mr. Isbell: I don't think the witness understands.
Court: Let the witness understand the question.

Q. I understood you to say a while ago that you had no knowledge of rates as to what ought to be a fair rate and what ought not to be a fair rate; in other words, you didn't have sufficient knowledge yourself to figure out a rate that would be fair to the shipper and fair to the railroad so as to enable the railroad to make a fair return on its investment?

A. No, I am not the Interstate Commerce Commission; I don't know.

Q. I just asked you if you had ever studied that question and if you are able to pass upon that question.

A. No, I am not able to pass on it.

Q. Have you any further reason in your mind on which you base your statement that you did not consider the $21,270.00 assessment as arbitrary? Have you any other reason other than you have given?

A. No, further than I say that the assessment of the dis-
335 trict seem to be—the assessments of the K. C. S. are not any higher relatively than on other property in the district.

Q. In other words, the $21,270, considering the railroad as valued for general taxation, as it appears to you, is not in proportion higher than the assessments on other property, considering the other property as valued for general taxation?

A. That is the way it looks to me.

Q. That does not consider the question of increased value, does it?

A. No sir.

Q. Do you know, and have you made any estimate, and can you tell the amount of increased products that may come to these railroads by reason of the construction of this highway, annually?

A. No, I wouldn't know it annually; I just know that the products that go by express are greatly on the increase through the section around Lockesburg and out east there.

Q. That would go to the express company, wouldn't it? The railroad company is not the express company?

A. Cantaloupes go by freight, do they not—cantaloupes and cucumbers?

Q. That would mean they would be hauled and transported by the American Railway Express Company?

A. They possibly would not go by express.

Q. You stated that; you stated the amount of products going by express was on the increase.

A. All right, just mark that off and say freight.

Q. By those products being increased you refer to perish-
336 able fruits and vegetables and things like that?

A. That is on the increase in that section aroung Lockesburg a great deal.

Q. And has been on the increase for several years?

A. The past two years.

Q. Hasn't it been on the increase to your knowledge for at least ten years?

A. No sir, not to my knowledge.

Q. You haven't kept any account of the increase, have you?

A. Just only what I see with my eyes.

Q. In other words, you see some stuff today and see some tomorrow and next year you see some but you don't keep any account of it, do you?

A. No sir.

Q. You haven't gone to the railroad station at Ashdown, Winthrop, Horatio and De Queen to see about whether there is any increase as shown by the actual figures?

A. No sir.

Q. You haven't gone to the stations at Lockesburg and examined things to see whether that increase went to Lockesburg, or not, have you?

A. No sir.

Q. If there was an increase in products that are carried in refrigerator cars and if that increase was carried to Lockesburg and proceeded over the De Queen & Eastern, would this highway have any effect on it at all if they were not carried over the highway at all?

337 A. You couldn't get them into Lockesburg without going over this highway?

Q. Over this highway?

A. Yes sir.

Q. They could bring it north and south of Lockesburg over highways, couldn't they?

A. Yes sir.

Q. They have increased at Lockesburg at least two years according to your own statement?

A. Yes sir.

Q. And this highway is not completed yet, is it?

A. No sir.

Q. The only way that products could get to Lockesburg over this highway would be for a short distance, say to the Cosatot river on the west and from the Saline river in the east?

A. Some would come from this side of the river.

Q. There are more products go on the west side of Lockesburg than come from the east side this way, are there not?

A. Yes sir.

Q. This proposed highway would not cause any additional products in the northern part of the Lockesburg territory or southern part of the Lockesburg territory to be transported to Lockesburg, would it?

A. I think it would.

Q. Although the road didn't reach it at all?

A. The road can only reach a strip of land fifty feet wide through the district and every man that lives north or south of it gets to it as quick as he can.

338 Q. Suppose there are highways going north and south of Lockesburg and northeast of Lockesburg and southwest of Lockesburg, are those highways used at all?

A. They are used in the summer when they can get over them?

Q. They have been used for years and years?

A. They don't use them much in winter.

Q. Since the De Queen & Eastern carries products is it not a competing line with this proposed highway?

A. Yes sir.

Q. Wouldn't the grower of products want to get his products to a refrigerator car just as quick as he could?

A. I should think he would.

Q. Do you think he would haul them twenty miles to De Queen when he could go ten miles to Lockesburg and get the same rate and same refrigerator car?

A. In some instances he would.

Q. Wouldn't the increase in traffic in that neighborhood go in a large measure to the De Queen & Eastern at Lockesburg, and there be placed in refrigerator cars insofar as it applied to perishable fruit and vegetables, and then be shipped from there in refrigerator cars to De Queen and from there go over the Kansas City Southern or the Texas, Oklahoma & Eastern?

A. Of course there would be part of it go that way, yes.

Q. You have made no estimate, have you, as to the amount of increased traffic that would result in the next twenty years?

A. I couldn't give any figures on it.

Q. You have not figured the amount of undeveloped land and the amount of developed land and the amount of cultivated

339 land in the district, have you?

A. Oh, just simply what I would judge by observation.

Q. I asked you if you had figured it?

A. No.

Q. Is there a road running from the east end of this highway to Nashville, Arkansas?

A. There is a public road.

Q. Have you ever traveled over it?

A. Yes sir.

Q. What size place is Nashville, Arkansas?

A. Oh, twenty-five hundred, I guess.

Q. Is it as large as De Queen or larger?

A. No sir, I don't——

Q. Do you know what the last Federal census showed De Queen to be?

A. Twenty-six hundred, I think.

Q. Do you know what the last Federal census showed Nashville to be?

A. No sir.

Q. Your estimate of Nashville is it is about twenty-five hundred?

A. I guess that.

Mr. Isbell: We'll concede that Nashville and De Queen are approximately the same population.

Q. Do you own lands in the district?
A. I have a home in De Queen.
Q. Is that in the district?
A. Yes sir.
Q. Will the lands be benefited by this highway?
340 A. I figure my place will be.
Q. Will all the other lands in De Queen be benefited?
A. It is my opinion they would be.
Q. Whether they are in the district or not, they will be benefited, won't they?
A. We have roads radiating from every direction here; we all feel we are benefited.
Q. If you have three or four roads and there is a benefit to each piece of property from each road there is a benefit?
A. Indirectly.
Q. A direct benefit to your property, isn't there?
A. I think so.
Q. What part of De Queen is your property in?
A. In the northern part.
Q. If this highway is going to bring increased traffic to De Queen, then isn't it true that every piece of real property in De Queen will have some benefit from the construction of this road?
A. If we had no other roads at all, yes. If we had just this one road every piece of property in this town would receive benefits.
Q. If you had other road districts and assessed benefits against them, that still would not prevent this highway from benefiting the property in De Queen to some extent, would it?
A. It would not keep it from benefiting it, no.
Q. Your thought, as expressed a while ago, was that if part of the property in De Queen is in another road district, notwithstanding this road may benefit all the other property it is fair to the other property not in the district to let it use the benefit from the other road so as to build that road and let the property in this
341 district which is in De Queen bear this burden for the construction of this road? Is that the thought?
A. Something like that. This road district over here benefits this part of town; this road district over here benefits this part of town.
Q. But all the property in the town would receive a benefit from both roads?
A. Yes sir.
Q. You haven't gone into the amount of benefit which all the property in De Queen would get by reason of the construction of this particular road?
A. No sir.
Q. Have you gone into the question of what benefit any of the property in De Queen would receive?
A. No, I haven't investigated it.
Q. You haven't investigated of what your own property would be benefited?
A. No sir.
Q. Or what any other property in De Queen would be benefited?

A. I just figure they would be benefited.
Q. You are in the employ of the district?
A. Yes sir.
Q. Getting a salary?
A. Yes sir.
Q. You are an employee of other highway districts?
A. Yes sir.

Q. Do you draw a salary from all of them?

342 A. No sir, I draw a certificate of indebtedness once in a while.

Q. Do you mean by that they are bankrupt and you are not going to get anything?
A. I am living in Hope.
Q. Are you getting anything for the work you are doing?
A. Very little.
Q. Are you employed by them?
A. Yes sir.
Q. Have they agreed to pay you?
A. Yes sir.
Q. Isn't your work dependent upon these highways?
A. Not altogether now.
Q. What other work do you do?
A. I do land surveying and do work for the Dierks people occasionally.
Q. The greater part of your work for the last two or three years has been this highway work?
A. Yes sir.
Q. You expect pay from this district?
A. Yes sir.
Q. And other districts?
A. Yes sir.
Q. Have they paid you any?
A. Yes sir.
Q. How much?
A. Several thousand dollars.

Q. Ten thousand dollars?

343 A. No sir.

Q. How much?

A. Possibly six thousand.
Q. You consider that almost nothing, do you?
A. No sir.
Q. You said you were living on hope.
A. I mean for the future.

Court: You are going a long way I think.
Mr. McDonough: Take the witness.

Redirect examination:

Q. As a fact are not nearly all the products shipped out of the territory in Road District Number 3 brought either over the dirt roads of the district or over the De Queen & Eastern Railroad to

De Queen and shipped out of the country over the Kansas City Southern Railroad?

A. Yes sir, nearly all the products of the district are shipped either over the De Queen & Eastern to De Queen or brought here over the roads and shipped.

Q. Mr. Byington, were you one of the engineers in the construction of the De Queen & Eastern railroad?

A. Yes sir.

Q. How long has that railroad been built?

A. It was built into Lockesburg in 1902; it has been about nineteen years.

Q. You are pretty familiar, then, with the road and its construction?

A. Yes sir.

344 Q. Did you ever work for the Kansas City Southern railroad?

A. No sir.

Q. Are you familiar or reasonably so with its track north and south of De Queen for several miles?

A. Yes sir, tolerably familiar.

Q. Whic- of those roads is the best constructed railroad?

A. The K. C. S.

Q. State the kind of buildings—the depot and shops—of the D. & E.

A. The D. & E. has a frame depot building and a brick roundhouse—the shop is a brick building.

Q. State the kind of buildings—the depot and other buildings and roundhouse and shops of the Kansas City Southern.

A. The Kansas City Southern has a brick with a tile roof; the roundhouse is a brick building.

Q. Which buildings are the larger, the Kansas City Southern's or the De Queen & Eastern's?

A. The Kansas City Southern's.

Q. How much larger?

A. Their depot must be twice as big, and the roundhouse and the buildings up there must be twice the capacity of the D. & E. I should judge.

Q. Do you regard the buildings and track of the Kansas City Southern in every way larger and more costly than the D. & E.?

A. A great deal more.

Q. I hand you here a map, introduced on yesterday by the railway company, showing the improvement districts and the highway and other roads located upon the district. I want to ask you,

345 first, what is the general topography of the country in here in sub-division B, just south of the Bankhead Highway?

A. That is rather hilly—rolling; that is, the drainage is south. That is a hilly section of the country up there along the Bankhead Highway.

Q. Is this country in here, say along in Section B, north of the De Queen & Eastern railroad along the Bankhead Highway accessible to that highway by reason of lateral roads?

A. In only one or two instances.

Q. Is it more accessible to Road Number 3?

A. Yes sir.

Q. As a matter of fact Road Number 3 is one of the oldest roads in the county?

A. Yes sir.

Q. And lateral roads have been built toward it and connecting with Number 3?

A. Yes sir.

Q. Whereas, the Bankhead Highway is comparatively a new road in the county?

A. A new road.

Q. Now, what about the products in sub-division C?

A. The products in sub-division C would come to De Queen.

Q. Over what road?

A. Over the Number 3 road; possibly some of that would go out to Geneva, but Geneva is only a box-car station—no agent there.

Q. Is there any market there for cotton, strawberries, cantaloupes, peanuts, peaches?

A. No, not any more than eggs I shouldn't think; I
346 bought a dozen or two of eggs there once.

Q. In sub-division 3, along the Cosatot river, where are the products in that country marketed?

A. As far as I am acquainted there the people in that sub-division do their business at Lockesburg; also in sub-division A.

Q. Now, what about this territory here in the western part of Howard County, immediately adjacent to the eastern end of this improvement district?

A. For several miles over in Howard County this trade would come to Lockesburg.

Q. What would induce that trade to come to Lockesburg?

A. The completion of this gravel surfaced road. They have a gavel-surfaced road through the Saline bottom would give them an easier way into Lockesburg.

Q. When was that graveled road built, and how, if you know, was it built across the Saline bottom there?

A. I undestand it was built by popular subscription, and it was built last summer.

Q. After the construction of Number 3 was under way?

A. Yes sir.

Q. What per cent of the territory in this part of Howard County on the east side of this improvement district is in cultivation or improved?

A. The hills are almost wholly improved after you get out of the bottom, and I guess fifty per cent of the bottoms. That is an old county there and has been settled up a long time.

Recross-examination:

347 Q. On this map appears a railroad running south and southwest of De Queen, marked D. & E. Railroad Company. Is that not the Texas, Oklahoma & Eastern?

A. Yes sir.
Q. That is the railroad you referred to as connecting the D. & E.?
A. It is called the D. & E. to the Oklahoma line.
Q. The Texas, Oklahoma & Eastern own it from the Oklahoma line to Valiant?
A. Yes sir.
Q. On this map the present road in controversy practically stops on the Saline river, doesn't it?
A. Yes sir.
Q. Now, recently, you stated to Mr. Edwards, there had been built a road from the Saline River — the hills east?
A. Yes sir.
Q. Making a good road from the eastern end of this road in controversy to Nashville?
A. Yes sir, a fairly good road.
Q. Then that was done by the people of Nashville, was it, or in that neighborhood?
A. No, I don't know who did that; it was by popular subscription. I think possibly Lockesburg was interested in that.
Q. Do any of the farm products west of the Saline go to Nashville over that good road?
A. I expect some.
Q. And that road that is extended east of the end of this one enables the products in Sevier County to go to Nashville?
348 A. Yes sir.
Q. At Nashville there is the Missouri Pacific Railroad Company?
A. Yes sir.
Q. And another line there, which is the Memphis, Dallas & Gulf, which is a little sick now, but it is there?
A. It is on that map.
Q. A part of it is on that map?
A. Yes sir.
Q. But Nashville isn't on the map?
A. No.
Q. Nashville is a good commercial center?
A. Nashville is a good town.

Redirect Examination:

Q. What is the length of that road built through the Saline bottom by public subscription?
A. It would be a guess to me; I guess a mile.
Q. I will ask you as a matter of fact if the road in question Mr. McDonough asked you about—the good roads you spoke of doesn't go to Center Point and not to Nashville, direct?
A. Yes, it goes to Centerpoint and then from Centerpoint to Nashville.
Q. State the distance from Lockesburg to Nashville around by Centerpoint.
A. I guess twenty-five miles.

Q. What is the distance to Centerpoint?
A. Sixteen miles from Lockesburg.

349 Recross-examination:

Q. That is a town?
A. Yes sir.
Q. A business there?
A. A little.
Q. County-site?
A. No sir.
Q. What is the county-site?
A. Nashville.
Q. What is the distance this road *this road* the nearest way t
Nashville?
A. Approximately it would be twenty miles.

Witness excused.

350 W. C. GRADY, called by the defendant, being duly swor
testified as follows:

Direct Examination.

By Mr. Edwards:

Q. Your name is W. C. Grady?
A. Yes sir.
Q. How old are you?
A. Forty-five.
Q. How long have you lived in Sevier County?
A. All my life.
Q. Where do you live now?
A. Lockesburg.
Q. State to the court what experience you have had as an asses
and in the valuation of property in this county.
A. About twelve years' experience as tax collector in this cou
and two or three terms as assistant tax-assessor.
Q. How many improvement districts of the county are you
assessor in?
A. Two.
Q. Will you state to the court what is the total assessed valuat
of the acreage property and town lots in this Road Improvem
District Number 3?
A. The total assessed value of the acreage and town lots is $8
660.00.
Q. What is the total amount of benefits assessed by your board
that property?
351 A. $488,354.
Q. At what rate, if you made the calculation, do t
assessments bear to the valuation of that property?
A. About fifty-four and a half per cent.

Q. State to the court the total assessed valuation of the property in Road Improvement District Number 3, owned by the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company.

A. The total assessed value is $129,615.00.

Q. What is the total amount of benefits assessed against that property by your board?

A. $21,270.00.

Q. Now, state the rate of its assessed valuation. Have you made that calculation?

A. Sixteen and a quarter per cent, or about that.

Q. Any other railroads in this improvement district?

A. Yes sir, the De Queen & Eastern Railroad Company.

Q. What is the assessed value of the De Queen & Eastern Railroad's property in Road Improvement District Number 3?

A. $93,790.00.

Q. State the amount of benefits assessed by the board of Assessors of this improvement district on that property of the De Queen & Eastern Railroad Company.

A. $29,720.00.

Q. If you made the culculation state what rate that bears to its assessed valuation?

A. About 31 and a half per cent.

Q. Any pipe line in the district?

352 A. Yes sir, two miles.

Q. What is the assessed valuation of that pipe line?

A. $16,600.00.

Q. What is the total amount of benefits you assessed against that pipe line?

A. $8,300.00.

Q. What rate does that bear to its assessed valuation?

A. Fifty per cent.

Q. I will ask you to state to the court on the Western Union Telegraph Company, for instance, what is the rate of assessment?

A. About sixty per cent.

Q. Here is the Southern Bell Telephone Company, what is the assessed valuation of the property in the district owned by the Southern Bell Telephone Company?

A. $344.00.

Q. Now, the Southwestern Telegraph & Telephone Company's assessed valuation is how much in this district?

A. $76.00.

Q. And the benefits assessed?

A. Fifteen dollars.

Court: What per cent did you put on that?

Mr. Edwards: It would be about twenty per cent.

Mr. McDonough: He didn't give the per cent, Your Honor.

Q. What basis did you use in assessing the benefits in this improvement district? State to the court.

A. Well, when it come- to the acreage and town lots we laid it

off in zones, 1, 2 and 3, and figured at the rate of about 60, 5
and 40.

353 Q. Sixty per cent of its assessed valuation in one?

A. And 50 in zone 2 and 40 in zone 3.

Q. You assessed the benefits against the railroad property o
the basis of its assessed valuation but at a lower rate than you did—

Mr. McDonough: That is an argument, Your Honor. I obje
to that.

Court: He stated what per cent he put the railroad at. He h
given the figures, and of course that is a matter of calculation.

Q. In arriving at the valuation of the property, state what valu
tion you took.

A. As a general thing we took the present assessed valuation fo
county and State taxes; in some instances, where there had bee
some improvements made since the assessment was made, we raise
it a little.

Q. You did take into consideration the value of the improvement
on the property, then?

A. Yes sir.

Q. You have assessed against the property of the Kansas Cit
Southern Railway Company and the Texarkana & Fort Smith Rai
way Company's property of this district $21,270.00, I believe?

A. Yes sir.

Q. Do you consider that an arbitrary or excessive assessment o
that property for this improvement?

A. No sir, I do not.

Q. In making this assessment and assessing the benefits yo
understood the character of the improvements that were t

354 be made upon the highway, didn't you?

A. Yes sir.

Q. The plans and specifications for the improvement were on fi
in the county clerk's office, where you worked in making those a
sessments, were they not?

A. Yes sir.

Q. And those plans were open to your inspection, or were the
inspected by you or looked over by you in making these assessments

A. Yes sir, we looked at them some.

Q. Has there been any change in recent years, I will say in th
last three years, in the crops grown in the territory embraced i
Road Improvement District Number 3?

A. Yes, there has been a great deal of change made.

Q. State to the court what that change is.

A. Well, it raises more truck, such as cantaloupes, potatoes, bean
strawberries.

Q. Any cucumbers and tomatoes?

A. Cucumbers and potatoes.

Q. They are abandoning what crops, Mr. Grady?

A. Well, cotton a great deal.

Q. State to the court whether or not there has been an increa
in the truck growing industry in this territory since the good ro
program in that territory was begun.

A. Yes, there has.

Q. In your opinion approximately how much has that truck and berry industry grown since they began building good roads in that territory?

355 A. I would think it had grown 75 per cent.

Q. Do you know where the principal products of the western part of Howard county is marketed, its lumber, its cotton and its truck?

A. Yes sir, it is marketed at Lockesburg.

Q. And over what road?

A. It would come over Road Number 3 from the Saline.

Q. Do you have any idea of the amount of lumber that has been moved over that road and from how many miles it is now being moved over that road during the past year?

A. I don't know exactly how much. They have been hauling it in pretty continuously there all the summer and fall.

Q. By one or two teams or by a number of teams?

A. By a number of teams.

Q. In your opinion is a good road leading into that section an incentive to the owners of that property to bring their products to Lockesburg to market and ship it?

A. I would think so.

Q. As compared to the route from that section of Howard County to Nashville, Arkansas, which is the better road and the better route over which to haul those products—lumber and farm products?

A. Well, it would be better to Lockesburg.

Q. By reason of the better roads?

A. Better roads, yes sir.

Q. In your opinion would the property of the Kansas City Southern and the Texarkana & Fort Smith Railway Companies in this district be increased in value in proportion to the benefits

356 your board has assessed against that property?

A. We thought so.

Q. State to the court on what you based that opinion? What elements entered into the assessment of that benefits or fixing of that benefit?

A. The country, in my opinion, the more developed it is, the more business the railroad company would have; of course the more business it had, the more value it would be to the railroad company; and this road opens up a territory to come here that probably would not otherwise.

Q. Is it, or not, your opinion that by reason of the improvements that the value of the railway property has been enhanced in value?

A. Yes, I would think the amount of business would enhance the value. If it got more business I think it would enhance its value.

Q. Do you consider that you have made a just, fair and equitable assessment upon the farming lands in the improvement district?

A. Yes, I think so.

Q. And that you have made a just, fair and equitable assessment upon the town lots in this improvement district?

A. Yes sir.

Q. And do you consider that you have made a just, fair and equitable assessment upon the railroad property and other public service utilities in the district?

A. Yes sir.

357 Q. Now, I will ask you this, is the railroad company's property any higher in proportion for the benefits it should receive from the improvement than the acreage property, town lots or any other property in the district?

A. No sir.

Questions by the Court:

Q. Is a surfaced road built by a farm or near a farm calculated to improve that farm any? In other words, would it cause that farm to produce one blade of grass more than it would before?

A. No sir.

Q. Then, is not the only profit to that land the good road that enables the farmer to better market the produce on the farm?

A. Yes sir.

Q. That is the reason it makes it a benefit to the farm because he may transport his goods to the railroad to market?

A. Yes sir.

Q. Then the benefit derived from it is not an enhancement to make it produce more but makes it more accessible to the railroad to get it off?

A. Yes sir.

Cross-examination.

Br. Mr. McDonough:

Q. That is because the farm gets better transportation?

A. Yes sir.

Q. That better transportation, then, benefits the farm because it makes a direct connection between the farm and the railroad?

A. To market, yes.

358 Q. If the farm produces no more than it did before the highway, then the railroad would get no more products from the farm, would it?

A. No, I guess not.

Q. You have just told the Judge in answer to his question that the construction of the highway would not cause the farm to produce a single stalk of cotton or blade of grass or ear of corn more. That is right, isn't it?

A. Yes sir.

Q. Then, its only benefit is it enables the farmer to get more quickly and more easily to the railroad?

A. Yes sir.

Q. Then the railroad, by reason of the improvement, absolutely gets no more products from the farm than it got before the road was built? That is true, isn't it?

A. Yes sir.

Questions by the Court:

Q. If that farmer cannot get his produce to market, he will not raise anything to ship off, will he?

A. No sir.

Q. It is because the road enables him to ship off his stuff that causes him to raise it?

A. Yes sir.

Q. The railroad wouldn't get anything to haul if they didn't produce it to haul, would they?

A. No sir.

Cross-examination resumed:

Q. He always has raised it, hasn't he?

359 A. I guess so.

Q. If the railroad doesn't get an ear of corn more or bale of cotton more, it doesn't get any benefit, does it?

A. No sir.

Q. You stated the highway would not enable him to produce a single blade of grass or ear of corn more?

A. Yes sir.

Q. The only benefit, in your opinion, that comes to the farm is accessibility, as you told Judge Steel?

A. Yes sir.

Q. Then, it does benefit the farm, doesn't it?

A. Yes sir.

Q. Makes it worth more?

A. I think so.

Q. And that is because it gives it a better opportunity to get the products to the railroad?

A. Yes sir.

Q. Then in making assessments here you taxed the railroad for a benefit that went to the farm, didn't you, in part?

A. Yes, some.

Q. Then in making assessments here you taxed the railroad for a benefit that went to the farm, didn't you, in part?

A. Yes, some.

Q. Now, you stated in answer to a question by counsel on the other side that you assessed the railroad property, in your opinion, at no greater proportion than you assessed the other property. That is what you stated, I believe?

A. Yes sir.

Q. I hold in my hand here the assessor's book of Road District Number 3, do I not?

360 A. Yes sir.

Q. Taking the first piece of land that I come to, you have A. J. Ballew, the name of the supposed owner, subdivision of land the East half of the northeast quarter, section 28, township 8, range 31. You have following that "zones." What zone is that in?

A. Zone one.

Q. How many acres?
A. Eighty.
Q. What is the present assessed valuation?
A. Four hundred dollars.
Q. You have under the column "Assessed benefits per acre" the number of figures throughout the page are erased. What is the meaning of that erasure?
A. I don't know why that was done. The assessors didn't do that.
Q. You have under the column "assessed benefits per acre" four hundred opposite that 80 acre tract which I have just described which is erased?
A. Yes sir.
Q. Then you have following that what?
A. "256" it looks like.
Q. What does that mean?
A. That wasn't put there by the assessors.
Q. What does it mean?
A. I don't know.
Q. You have under the same column "assessed benefits per acre, 250," which is erased?

361 A. Yes sir.
Q. Do you know the object of erasing that?
A. No sir.
Q. Do you know who did it?
A. No sir.
Q. Was it done by you?
A. No sir.
Q. Or by your board of assessors?
A. No sir.
Q. Did your board of assessors put "250" there?
A. No sir.
Q. Or "256"?
A. No sir.
Q. Under the head of that you have what?
A. $200.00.
Q. Is that $200.00 or $2.00?
A. That is what it is intended—$200.00.
Q. It really reads $2.00?
A. Looks like it.
Q. The "2" is in the dollars column and two ciphers in the cent column?
A. Yes sir.
Q. Was that put there by you?
A. Yes sir.
Q. By the Board of Assessors?
A. Yes sir.
Q. Is that in your handwriting?

A. Yes sir.

362 Q. At what rate did you figure that $200.00?
A. That is 50 per cent.

Q. Fifty per cent of the value as you found it on the books, didn't you?
A. Yes sir.
Q. What improvements are on that land?
A. I don't know how much.
Q. He has a dwelling, hasn't he?
A. I suppose so.
Q. You know where he lives, don't you?
A. No sir.
Q. Don't you know him?
A. No sir.
Q. Do you know his property?
A. Not personally, no sir.
Q. If he has any farm houses on there at all it is worth more than four hundred dollars, isn't it?
A. It might be.
Q. Then, how did you take into consideration the farm improvements if you don't know anything about whether it has a building on it or not?
A. We went by the assessed value principally on the tax book.
Q. And not by the improvements?
A. Not altogether.
Q. You didn't go on the place to see whether it has a ten thousand dollar house on it?
A. No sir.
Q. Whether it has a ten-thousand dollar house on it, you
363 don't know?
A. No.
Q. It may have a thousand dollar house on it?
A. Yes sir.
Q. It may have other buildings worth a thousand dollars?
A. Yes sir.
Q. And yet you assessed against it only two hundred dollars?
A. Yes sir.
Q. Taking the assessor's book?
A. I guess so in that particular instance.
Q. Can you pick out any piece of land in this district that does have a building on it, just from your recollection? I wanted to do that to save time. I want to get some tract of land you have assessed here which has a building on it.
A. There is one right there that has a building.
Q. That is H. H. Cooper?
A. Yes sir.
Q. That is the south half of the northwest quarter of the northwest quarter of the southwest quarter, and is five acres, is it not?
A. Yes sir.
Q. And the present assessed valuation, one thousand dollars?
A. Yes sir.
Q. And under the head of assessed benefits there is one thousand dollars?
A. Yes sir.

Q. And then following that there is the figure "100"?
364 A. Yes sir.
Q. You didn't put that "100" there did you?

Mr. Edwards: I want to object to the question because it is not under the head of "assessed benefits, one thousand dollars", but under the head of assessed benefits, per acre, one hundred dollars."
Mr. McDonough: That is right. I accept his suggestion.

Q. That is 100, but that you did not put there, did you?
A. No sir, it is supposed to be put there by the clerk.
Q. Put there by your authority?
A. I don't know who put it there.
Q. Does that mean an assessment of a hundred dollars per acre?
A. I suppose so.
Q. Then the benefit assessment is either $5.00 or $500.00, isn't it?
A. $500.00.
Q. That is, the five acres. Do you know of the value of that building, yourself, belonging to Mr. Cooper?
A. I know the building, yes.
Q. What kind of a building is it?
A. Pretty fair.
Q. What kind is it, dwelling or business house?
A. Dwelling.
Q. How many rooms in it?
A. About five rooms.
Q. Two story building?
A. No sir.
Q. Do you know what it cost?
365 A. No sir.
Q. Do you approximately know its value?
A. No, I don't know what it cost.
Q. Is your own property in here anywhere?
A. Yes sir.
Q. Could you turn to it?
A. It is section 21-9-30; I have 80 acres there.
Q. That is on page 25 of this book?
A. Yes sir.
Q. W. C. Grady. The first tract is the southeast quarter of the northwest quarter?
A. Of section 21-9-30.
Q. Section 21, township 9, south, isn't it?
A. Yes sir.
Q. Range 30, west?
A. Yes sir.
Q. Showing 40 acres?
A. Yes sir.
Q. Under the head of "present assessed valuation", $300.00, isn't it?
A. Yes sir.
Q. And then in figures erased, 300?
A. Yes sir.

Q. That is under the head of "assessed benefits per acre"?
A. Yes sir.
Q. And that is erased?
A. Yes sir.
Q. Is that erasure yours?
366 A. Yes sir.
Q. Is that the assessor's figures?
A. Yes sir.
Q. Did you assess your land at $300.00 per acre?
A. Yes sir, $300.00—no, that is the total assessed value.
Q. But that is under the column of "assessed benefits per acre"?
A. I suppose that is the reason it is scratched out.
Q. Then, you didn't assess it at $300.00 per acre?
A. No sir.
Q. There is 450 that is on the last column under the same heading and that is 450?
A. Yes sir.
Q. What is that?
A. That is 4.50 per acre.
Q. $4.50 per acre?
A. Yes sir.
Q. Under the head of total benefits you have what?
A. $180.00.
Q. What improvements have you on that 40 acres?
A. I have about 15 acres in cultivation.
Q. Any house?
A. No house.
Q. And what is the land worth?
A. Well, it ain't worth so awful much now since we had the overflow.
Q. What was it worth before the overflow?
A. About $50.00 an acre.
367 Q. Aren't lands selling in there at a hundred dollars an acre?
A. No sir.
Q. And weren't they selling at a hundred dollars an acre in 1918 and 1919?
A. No sir.
Q. Now, the next is the southwest quarter of the northwest quarter, forty acres, and under the last column, under the heading "assessed benefits per acre," you have $6.00. Does that mean $6.00 per acre?
A. Yes sir, I guess so.
Q. That has an assessment of $240.00?
A. Yes sir.
Q. Have you a building on that forty?
A. No sir.
Q. Is your home on any of the land assessed against you?
A. Yes sir, but not in any of this.
Q. On what land is your home?

A. There is one small tract; it is divided up into several different tracts.

Q. Is your home on that?

A. No sir.

Q. That is on page 29?

A. Yes sir.

Q. Have you any buildings on that tract?

A. None on that.

Q. You are on page 30 now. Is your home on any tract shown on that?

A. Yes, I have some buildings on this tract.

368 Q. I wish you would describe that land and show what it is.

A. It is the south 210 feet of the southwest quarter of the southeast quarter of the southwest quarter.

Q. And that has a total acreage of how much?

A. Three and eighteen hundredths acres.

Q. Present assessed valuation is what?

A. $210.00.

Q. And you have under the column which is erased "300" in pencil, and it is erased, isn't it, or rubbed out?

A. Yes sir.

Q. The next is fifty-six twenty-five. What does that mean?

A. Fifty-six, twenty-five per acre.

Q. That is in the last column "assessed benefits per acre," isn't it?

A. Yes sir.

Q. And you have a total against that of $180.00 have you not?

A. Yes sir.

Q. Is there a building on that property?

A. Yes sir.

Q. Dwelling?

A. Yes sir.

Q. What did the dwelling cost you?

A. I didn't build it.

Q. What did you pay for it?

A. I didn't pay anything.

Q. Did you pay anything for the land?

A. No sir.

Q. What is the land worth, or what was it worth in 1919—

369 land and building and all of it together?

A. I don't know hardly; worth probably four hundred dollars—four or five hundred dollars.

Q. Do you rent it?

A. No sir.

Q. You live in it yourself?

A. Yes sir.

Q. Now, you live in the town of Lockesburg?

A. Yes sir.

Q. Can you point out in this book the name of any man who owns acreage in the district in or near Lockesburg?

A. Oh yes.

Q. If you can I wish you would refer to it; you know the people there, and I want to get someone without taking too much time. I mean a farm, if you can turn to a farm which has ordinary improvements and farm improvements and dwellings and things of that kind.

A. You might take the Coulter farm.

Q. That is on page 42. It is under the name of whom?

A. Murf Coulter.

Q. The first sub-division is the west fourth of the south half?

A. West fourth, south half, northeast quarter, southeast quarter.

Q. Five acres of that. Has that any buildings on it?

A. No sir.

Q. Did you show any improvements on here considered as buildings? There is no column here showing buildings?

A. No sir.

370 Q. There is nothing on this book showing buildings on it?

A. No sir, not on this book.

Q. Mr. Coulter has a house on that farm?

A. Yes sir.

Q. Which tract is the house on?

A. He has got a house on this tract.

Q. Which tract is that?

A. The one on this one.

Q. That is the one on the northwest quarter, fractional northwest quarter and under the column of total acres you have 137, have you?

A. Yes sir.

Q. And then under that you have "present assessed valuation, $780.00"?

A. Yes sir.

Q. What kind of a house has he on that?

A. He has, I suppose, a little five room house.

Q. What is it worth, in your judgment?

A. It is worth four or five hundred dollars.

Q. The assessed benefits amount to eight hundred dollars?

A. Yes sir.

Q. And the land itself 137 acres?

A. Yes sir.

Q. You have no separate valuation, nothing to show that the house is valued at all?

A. No sir.

Q. On the other hand your valuation shows you valued it at $5.97 an acre?

371 A. Yes sir.

Q. The tract above it at $6.00 an acre?

A. Yes sir.

Q. Then under the "assessed benefits, per acre" column you find acreage valued on this page two dollars and a half per acre, one at eighty-seven and a half, one at two and ranging up as high as $5.90 in the last Coulter tract, haven't you?

A. In the last one mentioned, yes sir.

Q. $5.90 and that shows the assessed benefits per acre of those tracts of land?

A. Yes sir.
Q. And there is nothing to show an assessment on the improvements, is there?
A. No, only it is supposed to have been included in the value of the land.
Q. But your record doesn't show it?
A. Not separately.
Q. The next tract shows a present assessed valuation of $1,500.00 and acreage how much?
A. 314-81 looks like.
Q. 314 and 81 hundredths acres?
A. Yes sir.
Q. That is the valuation on $1,500.00?
A. Yes sir.
Q. Is that farm in cultivation?
A. Yes sir.
Q. What is that farm fairly worth, Mr. Grady, per acre?
A. It is very old land; I expect twenty-five dollars an acre.
372 Q. Isn't it a fact that farm was worth a hundred dollars an acre when that assessment was made?
A. No sir.
Q. Is Mr. Coulter here?
A. No sir.
Q. And the assessment against that is how much?
A. He has that seventy six, ten. It is bound to be an error though.
Q. And the total assessed benefits against it is $2,400.00, isn't it?
A. Yes sir.
Q. You think $76.10 an acre is an error?
A. Yes sir.
Q. What is the assessed valuation in your opinion—the benefits, I mean—what are the assessed benefits per acre in your opinion?

Mr. Edwards: That is objected to as being purely a matter of calculation. The benefits are assessed here on the tract as a whole.
Court: That is a matter of calculation.
Mr. McDonough: All right.

Q. The total assessed benefits against that 314 and 81 hundredths acres amounts to $2,400.00?
A. Yes sir.
Q. Do you know whether there are any improvements on that 314 acres or not?
A. No sir, I don't think there is any on there.
Q. How much of it is in cultivation?
A. I expect there is 60 per cent of it.
373 Q. How far is it from Lockesburg?
A. About two and a half miles. It is right on the highway.
Q. There are valuable farm houses in this district on some of the farms, are there not?
A. Yes, there are some few.

Q. Who owns the most valuable farm house, in your judgment, in this district on a farm—which farm house is on a farm?

A. Well, I have an idea that Jim Campbell's house out on the road is about the most valuable house on the road.

Q. How far is the farm from Lockesburg?

A. It is nearer here than it is Lockesburg; it is about three miles out.

Q. Three miles out from De Queen?

A. Yes sir.

Q. Do you know the acreage Mr. Campbell owns?

A. No sir, not all.

Q. It is shown on the book, though, isn't it?

A. Yes; I don't remember the section it is though. Here is J. W. Campbell but I don't know which particular tract.

Q. You find Fannie Campbell and J. W. Campbell on page 3, do you not?

A. Yes sir.

Q. Now, under the head of Fannie Campbell there is the southwest quarter, northeast quarter, section 33-8-31 forty acres; that has a present assessed valuation of $200.00, has it?

A. Yes sir.

Q. And under the head of "assessed benefits per acre," it
374 has $2.50?

A. Yes sir.

Q. And $100.00 total assessed benefits?

A. Yes sir.

Q. Is that the tract on which the valuable house is?

A. No sir.

Q. Can you find the tract on which the valuable house is?

A. I think this is the tract.

Q. That is the southeast quarter, northwest quarter, is it?

A. Yes sir.

Q. Section 33-8-31, forty acres?

A. Yes sir.

Q. And that has a present assessed valuation of $750.00?

A. Yes sir.

Q. The column had in it a thousand, which is erased, is it not?

A. Yes sir.

Q. Then you have under the head of "assessed benefits per acre" $12.50?

A. Yes sir.

Q. And a total assessment of that of $500.00?

A. Yes sir.

Q. What improvements is there on that besides the dwelling house?

A. There are some outbuildings.

Q. In your opinion state as near as you can what is the reasonable, fair value of all those improvements considered separate and
375 apart from the real estate itself? I mean what was the fair market value of the dwelling and out houses, and buildings

of every kind, including all the improvements; I mean improvements in the way of buildings?

A. I imagine twelve or fifteen hundred dollars.

Q. Wouldn't the house alone cost more than three thousand dollars?

A. I don't know; it might do it. I wouldn't think so, though.

Q. It is about three miles from De Queen?

A. Yes sir.

Q. Does the proposed highway run through the land?

A. I don't know that it runs right through it; it runs right by.

Q. Your best judgment, then, that all the improvements, buildings of every nature and description would be worth from twelve hundred to fifteen hundred dollars? Is that right?

A. Yes sir.

Q. Now then, the present assessed value is $750.00?

A. Yes sir.

Q. You took that from the tax books?

A. Yes sir.

Q. You didn't raise it, did you?

A. I don't suppose we did.

Q. Although you believe that the buildings alone were worth from twelve hundred to fifteen hundred dollars?

A. Yes sir.

Q. What is forty acres of land worth?

A. Not very much.

376 Q. About how much?

A. I don't hardly know.

Q. I mean by what is it worth, what would it reasonably sell for on the market where there is a buyer who wants to buy and a seller who wants to sell?

A. Really I don't know what land is sold for out in that country.

Q. Give your best judgment as to the fair market value.

A. About two hundred dollars.

Q. Then, if the improvements are worth $1,500.00, then $1,700.00 would be the worth of the entire property?

A. Yes sir.

Q. Then you assessed its benefits at about one third, did you, of its value?

A. Well, you know all stuff, though, assesses at fifty per cent.

Q. That is what I am trying to get at; you take the value of farm lands and all other property at 50 per cent of its valuation?

A. We take the majority of it at its present tax valuation.

Q. That is 50 per cent. As a matter of fact the real value is a great deal higher, isn't it?

A. Some of it, yes.

Q. You did not assess railroad property at so much per acre, did you?

A. No sir.

Q. There are only two miles of main line road in this district? Isn't that right?

A. Yes, according to the plat.

Q. You didn't figure the acreage there?
377 A. No sir.
Q. Do you know how much acreage there would be in two miles of right-of-way and yards, all used actually for railroad purposes?
A. No sir.
Q. You didn't even figure the acreage, then, at all?
A. No sir.
Q. You have never been a railroad operator?
A. No sir.
Q. Your business is that of a farmer and have been engaged in that all your life?
A. Practically so.
Q. What is your age?
A. Forty-five years.
Q. You have been farming in this county that length of time or ever since you were grown?
A. Yes sir.
Q. Been in business for yourself?
A. Yes sir.
Q. Never had anything to do with railroad valuation or the operation of a railroad?
A. No sir.
Q. You have never made a study of how railroads earn their money?
A. No sir.
Q. Never had any experience in valuing railroad property?
A. No sir, we were governed by the assessments turned in by the commission.
Q. Isn't it true that the Commission notified you about the
378 amount of money that would be necessary to build the highway before you began your assessments?
A. No, I don't know as they told us the exact amount; we were led to believe, though, it was going to be a bond issue of about two hundred thousand dollars and the bond people would require something like a half-million assessed against this property.
Q. The purpose of making the assessment, at least in one respect, was to get the assessment high enough to satisfy the bond people?
A. Yes, we had to do that.
Q. You then formed your own opinion as to the amount of money required or did you get it from the records or the commissioners?
A. I don't remember the commissioners ever telling us exactly; we were under that impression, though, I know.
Q. Did they tell you approximately?
A. They probably did.
Q. Didn't you get in some way information as to the approximate cost of the highway, and then make up your amount you would assess the property so as to raise that amount of money?
A. Yes sir.
Q. Now, what estimates or plan did you go upon to ascertain

what benefits, if any, would accrue to a railroad property or the railroad property in question?

A. We thought any improvement would be a benefit to all property owners in the district.

Q. That is the theory upon which you proceeded?

A. Yes sir.

Q. And believing that any improvement of this kind
379 would be a general community benefit, that was your theory?

A. Yes sir.

Q. You then assessed this on the railroads upon the theory that the highway would be a general community benefit upon the real property in the district?

A. Yes sir.

Q. How did you reach the conclusion that railroad property would be benefited at all?

A. We thought any improvement would naturally cause more traffic over the railroad.

Q. Then you based your estimates of benefits on the assumption that there would be an increased traffic to this railroad, didn't you?

A. Yes sir.

Q. What consideration, if any, did you give to the fact that this railroad already had a connecting line, an independent line—the De Queen & Eastern—which could, if need be, haul all products in its district—from its own district from Lockesburg to De Queen and turn them over to the Kansas City Southern? Did you give any consideration to that?

A. No sir, I don't know as we did.

Q. Do you know of any way that a highway like this could benefit the railroad property in question except by giving it more traffic?

A. No sir.

Q. What kind of additional traffic did you estimate that this Kansas City Southern would receive?

A. I don't know as we figured on any particular amount.

380 Q. If you did figure on any amount how could you estimate any benefit?

A. Well, we knew, and we all know, that highways improve a country, and the more it is improved the more traffic a railroad is bound to receive, and by getting more traffic it is bound to receive some benefit.

Q. If I understand your answer it is exactly the same answer you gave before. The question I asked you was, if you made no estimate of the quantity of increased traffic how could you ascertain any benefit at all?

A. We knew that there was bound to be some benefits from this highway because the traffic would naturally be heavier—be more—and the truck business is growing every day—every year—over this part of the country.

Q. That growth has been going on for a long number of years, hasn't it?

A. About three years.

Q. And this assessment was made in 1919?

A. Yes sir.

Q. I want to be sure that I understand you; I don't think you understood the question, while I won't pursue it further: If I understand you, you made no attempt to estimate the amount of increased traffic which would come to the Kansas City Southern Railway Company?

A. No, we didn't do that.

Q. You made no attempt, then, to figure out what benefits it would get by reason of the increased traffic, did you?

A. No, we just took it for granted that it would get it, and
381 figured it that way.

Q. And whether the business would pay or not pay you didn't figure?

A. No sir.

Q. Whether the rates would be so as to enable the carrier to earn a fair return you didn't consider, did you?

A. No, I don't know anything about the rates.

Q. As I understand your answer on direct examination, you stated that the road, meaning this highway, opened up a territory that would not have otherwise opened up. What do you mean by that?

A. I meant that territory in the western part of Howard County—there is a great deal of stuff that came over to Lockesburg this year from that part of the country.

Q. In other words, by the extension of the road to the Saline river trade would be brought from Howard County to Lockesburg?

A. Yes sir.

Q. Hasn't Lockesburg enjoyed that trade for a long number of years?

A. No sir.

Q. Isn't there sharp competition between Lockesburg and Nashville?

A. No sir.

Q. Don't you know both town- are contending for the trade in the Saline bottoms?

A. I suppose they are to some extent.

Q. Don't you know part of the products from the west Saline bottoms go to Nashville, even today?

382 A. I suppose it does—the cotton end of it.

Q. Cotton is a valuable product in this road district, isn't it?

A. Not much; only 1,277 bales raised in this county up to date.

Q. How many were raised last year?

A. About six thousand.

Q. How many raised in this district last year?

A. I don't know in this particular district.

Q. How many raised in this district this year?

A. About four hundred.

Q. What is the distance from Lockesburg to the Saline river?

A. Six miles.

Q. The products that come from east of Lockesburg have been loaded at Lockesburg, have they not?

A. Yes sir.
Q. That refers to the lumber as well as other products?
A. Yes sir.
Q. Perishable fruits are loaded there in cars at Lockesburg?
A. Yes sir.
Q. Refrigerator cars?
A. Yes sir.
Q. And the lumber is loaded there and hauled out?
A. Yes sir.
Q. And it has been that way for a long number of years, hasn't it?
A. Yes sir.
Q. And in that entire country east, if there is any undeveloped portion of it east of Lockesburg that is put in cultivation,
383 it will still be contributory to Lockesburg for business?
A. I think so; yes sir.
Q. In making the assessments you referred to what you did in the town of De Queen; you referred to the mill property in the town of De Queen which lies within the district, did you not?
A. Yes sir.
Q. In your opinion is not all the property benefited in De Queen by the construction of this highway as well as the property in De Queen just in the district?
A. I think so; yes.
Q. You did not assess any benefits against the property in De Queen which was not in the district?
A. No sir.
Q. The commission has never taken any steps to assess the remainder of De Queen for any benefits that that remainder might derive from the construction of this road, has it?
A. No sir.
Q. Your assessment of the Kansas City Southern in this regard and the Texarkana & Fort Smith Railway Company shows at two places, does it not, on this record assessed under the head of "Assessment Record," which is erased and marked void? Was that done by you or by your board of assessors?
A. Yes, I think it was.
Q. Why was that marked void?
A. Really I don't remember now; we made some mistake, I reckon, in putting it down. We had it one mile and then we had seven eight-s of side tracks estimating it.
Q. It reads "Kansas City Southern Railroad Company,
384 main track, one mile?"
A. That is the way it reads.
Q. Side tracks, seven and a half miles, estimating it; buildings; then opposite main line you have $27,000.00?
A. Yes sir.
Q. And assessed benefits per mile, $3,500.00, is it not?
A. Yes sir.
Q. And then for the seven and a half miles estimated, you have $22,500.00?
A. Yes sir.

Q. Is that in your handwriting?
A. No sir.
Q. In whose handwriting is it?
A. I think that is in Mr. Steel's handwriting?
Q. Then, under the head of "Assessed Benefits Per Mile" you have $3,750.00?
A. Yes sir.
Q. That is marked void also; under buildings you have $46,365.00, present assessed valuation?
A. Yes sir.
Q. That is marked $9,270.00?
A. Yes sir.
Q. That is on the page and right under the De Queen & Eastern assessment which shows a reduction from $29,000.00 to $15,000.00?
A. Yes sir.
Q. Now, on the second page after that you find the "Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company main track, two miles?
385 A. Yes sir.
Q. Fifty-four thousand dollars?
A. Yes sir.
Q. $35,000.00 ($3,500.00).
A. Yes sir.
Q. Total amount of benefits $7,000.00?
A. Yes sir.
Q. Then side track how many miles?
A. Nine and three quarters.
Q. At how much a mile?
A. Five hundred dollars, I suppose.
Q. That is the benefits?
A. The assessed benefits per mile.
Q. The value is $29,250.00?
A. Yes sir.
Q. You assessed $500.00 benefits on that sidetrack, didn't you?
A. Yes sir.
Q. Or $5,000 per mile?
A. $5,000.00 total.
Q. Total benefits?
A. Yes sir.
Q. That is under the head of "Assessed benefits, per mile, five thousand dollars." Then the total is $5,000.00?
A. Yes sir.
Q. That is an error, then, isn't it?
A. Yes, that is, this here "per mile."
Q. Five thousand dollars per mile would make nine and three quarters times five thousand; hence that is an error in your opinion?
386 A. Yes sir.
Q. Because the total amount, the record shows, is five thousand dollars against sidetracks?
A. Yes sir.

Mr. Edwards: We want to object to this line of interrogation, and ask the court to permit the witness to state here and now the amount of mileage of the railway company's——

Mr. McDonough: He has already stated that.

Mr. Edwards: And its valuation.

Mr. McDonough: He has already stated that.

Mr. Edwards: And the total assessments.

Mr. McDonough: He has already stated that.

Mr. Edwards: Then, anything else is immaterial.

Mr. McDonough: The objection is absurd.

Court: It is just a mistake there that doesn't affect the railroad at all.

Mr. McDonough: If it will save time I have nothing further to ask in that regard.

Q. Now then, Mr. Grady, that leaves a total, as heretofore stated, of $21,470.00?

A. Yes sir.

Q. Now, I wish you would state to the court what buildings are included under the title of buildings there.

A. It is all the buildings on the line of the Kansas City Southern in this district, including the depot, roundhouse, and so forth.

Q. That would include the depot, which is on the right-of-way?

A. Yes sir.

387 Q. The roundhouse, which is on the right-of-way, and the yard office, wouldn't it?

A. Yes sir.

Q. That, too, is on the right-of-way?

A. Yes sir.

Q. The section houses are on the right-of-way?

A. Yes sir.

Q. And the water-tank is on the right-of-way?

A. Yes sir.

Q. And the oil-storage tank—I mean the tank where the oil fuel is used—that is on the right-of-way?

A. Yes sir.

Q. The turntable is on the Company's property?

A. Yes sir.

Q. And used exclusively for railroad purposes?

A. Yes sir.

Q. The tool houses are on the right-of-way?

A. Yes sir.

Q. And the store house, that is for such things that are used—for the storage of such things as the company needs in the operation of the railroad?

A. Yes sir.

Q. And this mechanical department building that is similarly situated to the roundhouse and these other buildings, are they not?

A. Yes sir.

Q. There are no other buildings than those, are there?

A. Not that I know of.

388 Q. As to the value of those you do not have any knowledge, do you?

A. No sir.

Q. No personal knowledge?

A. No sir.

Q. All the buildings which you assessed are on the right-of-way?

A. Yes sir.

Q. And those buildings are used for nothing except railroad purposes, are they?

A. Not that I know of.

Q. Mr. Grady, referring to the matter of your making the assessment on the farm lands on the theory that it gave added transportation from the farm lands to the railroad, is it not true that in making the assessment of benefits you considered that the construction of the highway, being a part of a general system of highways, would give some additional transportation throughout the country wherever the highways extended?

A. Yes, I should think so.

Q. Then, you had in mind that it would lower rates of transportation, did you not?

A. No sir, I don't remember that we took that into consideration at all.

Q. I will ask you if you read an article that appeared in the De Queen Bee July 29th, 1921. I will show you the article and ask you to read it and see if you had that thought before you at the time you made these assessments?

389 A. I don't remember of noticing it before.

Q. Do you remember reading that article in the paper?

A. No sir, I don't remember it.

Mr. Edwards: I object to that as being incompetent, irrelevant and immaterial. He is offering here an article in a newspaper.

Mr. McDonough: I haven't offered it yet.

Mr. Edwards: He is questioning the witness about it, and taking the time of the court about a matter that is wholly incompetent, irrelevant and immaterial, and known to be incompetent by him, and not competent for any purpose.

Mr. McDonough: That statement is unjust; it is not a true statement.

Mr. Edwards: I am in earnest in the matter. I don't think you can show any competency, relevancy or materiality in that newspaper article.

Mr. McDonough: If I offer it—I am an officer of this court and I have been here a long time——

Court: The point about it, I don't know what the article is. That seems to have been published in July, 1921, when this assessment was made away back yonder. I don't know what effect that article would have on the minds of the assessors at the time the assessment was made.

Mr. McDonough: I am not offering it at all.

Court: You are asking him to read it, though; I don't know for what purpose.

Mr. McDonough: To see whether he read it.

Court: He didn't read it before he made the assessment.

Mr. McDonough: It was published in the Farm & Ranch.

390 Court: I don't know what effect that would have on the case.

Mr. McDonough: It might have a great deal.

Court: I don't know. Go ahead.

Mr. Edwards: It is not the article I am objecting to, but the fact that he is taking the time of the Court and all of us questioning him about this matter.

Mr. McDonough: It is a very important case and——

Court: Go ahead, and see what it is.

Q. Mr. Grady, did you read that article as it appeared in the Farm & Ranch, a farmer's publication?

A. I did not.

Q. You did, however, in making the assessment take into consideration the fact that the development of this great good roads extending throughout the country would give additional transportation to the farms located within reach of those roads?

A. Yes sir.

Q. And you considered, did you not, and did you not believe that that would take transportation away from the railroads in a measure?

A. I didn't think this one would from the Kansas City Southern because it didn't run parallel with it.

Q. But if it connected up with other roads, it would, would it not?

Mr. Edwards: We submit that is incompetent because it has been clearly shown there are no connecting roads with this road running east.

Court: No, there is none running out that way.

391 To the ruling of the court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Do you not know, Mr. Grady, that the construction of these highways bring- on competition with railroads?

A. No sir, I don't know it.

Q. Don't you know there is transportation by truck and by automobile, both of freight and passengers?

A. Yes sir, there is -ome of that.

Redirect examination:

Q. You made the statement on cross-examination about the amount of cotton grown in the county last year and that grown this year, and the amount grown in this district this year. State how you obtained that information.

A. I took the statistics for the Government.

Q. In other words, you made the ginners report, did you not, for this county?

A. Yes sir.

Q. And your statement is made from a knowledge of those statistics?

A. Yes sir.

Q. Mr. Grady, I call your attention here to the assessment made against the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, and ask you to state the total number of miles as you look at the record of main line within this improvement district.

Mr. McDonough: It has already been gone over, Your
392 Honor, and it is just taking time. It has been admitted.

Court: I suppose he is leading up to something else.

To the ruling of the court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. And the total valuation is $54,000.00?

A. Yes sir.

Q. Now, the assessments per mile?

A. $3,500.00.

Q. The total assessed benefits on that two miles?

A. $7,000.00.

Mr. McDonough: I move to exclude all that because it is rebuttal of the matter that has been gone over.

Court: Yes, that has been gone over. If you are leading up to some other question, go ahead, I don't know what it is but these facts have been gone over several times.

Q. Under the head of "Assessed Benefits" there are the figures, 3500. Whose handwriting is that in?

A. I think that is mine.

Q. Under the same head there is the figure of 7000. Whose handwriting is that?

A. That is mine, I think.

Q. Does that mean that there is an assessment of seven thousand dollars per mile or seven thousand dollars for two miles of the road?

A. It means an assessment for the two miles of road.

Q. Now, then, on the side track of nine and seventy-five hundredths miles, what is the total assessed benefits against that?

393 A. Five thousand dollars.

Q. And there is not an assessment of five thousand dollars per mile on that property, is there?

A. No sir.

Re-cross examination:

Q. Then, your record is incorrect?

A. It is an error there, yes sir.

Redirect examination:

Q. Now, state to the court, (and I object to counsel interrupting the witness until I am through with him—is there an error of the assessment of the Kansas City Southern Railway Company and the

Texarkana & Fort Smith Railway Company property? Is there any error in that assessment?

A. No sir, except that one there.

Q. Explain wherein that amounts to an error.

A. It really doesn't amount to an error because——

Q. The totals are correct?

A. Yes sir.

Q. Mr. McDonough interrogated you about a matter on the record that has been erased and marked void. Was that word 'void' and that erasure made by you or some member of your board?

A. It was by some member of the board, I think that 'void' was written by me.

Q. Then that matter of assessing only one mile of main line, as brought out by Mr. McDonough, means absolutely nothing on this record because it was erased by you and your board before you
394 adjourned and while you were in session, was it not?

A. Yes sir.

Q. I notice here on this record the following endorsement with reference to the assessment against the D. & E. Railroad Company's property. Here is the endorsement: "Above entry showing assessment of D. & E. Railroad Company's property, being reduced to $15,000.00 is erroneous, and was entered on this record without our knowledge or consent, and is an error. This, the 8th day of August, 1921." Signed, "Jacob Brown, W. C. Grady, R. Steel, Board of Assessors of Road Improvement District Number 3 of Sevier County, Arkansas." I will ask you if you signed that record. Is that your signature to that endorsement?

A. It is.

Q. Is that the signature of the other assessors written by them?

A. Yes sir.

Q. Mr. Grady, Mr. McDonough questioned you about the residence property assessment against H. H. Cooper. How long has that residence been built?

A. It has been built, I expect, twenty years.

Q. He also questioned you about building a residence upon your own land. How old is that building?

A. I don't know.

Q. Approximately how old?

A. I suppose it has been there twenty-five or thirty years. Part of it has been there, I expect, forty-five years.

Q. He also questioned you about the farm land of R. M. Coulter, and asked you if that land was not worth $50.00 per acre, I
395 believe. I will ask you if you know what Mr. Coulter paid for that land about the year 1918?

Q. Mr. Grady, step over here to this map of the county. Starting in the northeast corner of this district, section 3, township 9, south, range 29, west, I will ask you to look at this map and state to the court whether or not you are acquainted with those lands and have been on them, know the improvements, the nature of the soil and their relative value.

A. Yes sir, I have been over them a whole lot.

Q. I will ask you to take the lands here in section 10, township south, 29, west, and ask you if you know the nature of the soil, e improvements on all of the lands in that section, and its value. re you acquainted with that land?

A. Yes sir.

Q. Take the section immediately south of that, section 15, township 9, south, range 29, west. I will ask you if you are acquainted ith the lands, the nature of the soil, the amount of the improvements and the ownerships of the different tracts in that section 15.

A. Yes sir.

Q. I will ask you to take that part of section 14, township 9, uth, range 29, west, that is in the district, and state to the court hether or not you are acquainted with the lands in that section ing within this district, know the nature of the soil, the topography f the country and the amount of improvements?

A. Yes sir.

Q. I will ask you to take section 22, township 9, south range 29 west, and state to the court whether or not you are familiar with the lands in that section, and know the nature f the soil, the topography of the country, the improvements upon ne lands of the various tracts in that section.

A. Yes sir.

Q. Take section 27, township 9 south, range 29 west, and I will sk you if you know the lands, improvements, topography of the ountry and value of that land in section 27, township 9, south, ange 29 west.

A. Yes sir.

Q. Now, I will ask you if you are familiar with all the lands ncluded within this road improvement district and lying in township 9, south range 29 west—if you are acquainted with every tract f land in that township embraced in this district, know the general opography of the country, the nature of the soil and the amount f the improvements.

A. Yes sir.

Q. And you had that information at the time you made that assment, did you not?

A. Yes sir, I did.

Q. Now, I will ask you to take that part of this improvement district lying in township 9, south range 30 west and ask you if you re familiar with each tract of land in this district lying in that ownship, know the topography of the country, the amount of improvements upon the various tracts of land and its approximate alue and the nature of the soil.

A. Yes sir.

Q. The town of Lockesburg is located in that township, is it not?

A. Yes sir.

Q. Now, I will ask you if you are thoroughly familiar with each ot and block and parts of sections in the town of Lockesburg, know he improvements upon each of these lots and blocks, its approxi-

mate value, the nature of the soil, its location with reference to streets and roads.

A. Yes sir.

Q. I will ask you if you are reasonably familiar with other sections of the district along the same line.

A. Reasonably so, yes.

Q. Now, I will ask you what is the nature and kind of soil here in sections 28, 29, 32 and 33, township 9 south, range 30 west, Mr. Grady?

A. It is all unimproved—swamp land.

Q. Did you assess the benefits against that unimproved and swamp land in proportion to its assessed valuation the same as you did the other real property of the district?

A. We did.

Q. I will ask you to take your record there and take up the town lots in the town of Lockesburg and let us interrogate you about their values and benefits assessed against them. Turn to Survey A for the town of Lockesburg. The first on page 49 of the record I find there that lot 1, block 14 of Survey A to the town of Lockesburg shows a present assessed valuation of seventeen hundred dollars and the total assessed benefits twelve hundred dollars.

A. Yes sir.

398 Q. That is the benefits you extended against that 1 lot?

A. Yes sir.

Q. Lot 2, the same block its assessed valuation was two hundred and the benefits is three hundred.

A. Yes sir.

Q. Is that an unimproved lot, or not?

A. Yes sir.

Q. Here is lot 3 assessed to the McCown estate—maybe we had better take it in the sub-division east half of lot 3, block 14, valuation a hundred dollars; assessed benefits, ninety dollars. Is that an unimproved lot?

A. Yes sir.

Q. J. A. Lewis estate east 21 half of the west half of lot 3, block 14, valuation $150.00; assessed benefits $120.00. I will ask you if that was an unimproved lot at the time you made the assessment?

A. I think it had a little building on it; a little grist mill—a very small building.

Q. A. C. Owens, west 30 feet of west half of lot 3; valuation $200.00; assessed benefits $180.00. Was that an unimproved lot at that time?

A. It had a little garage on it.

Q. The next is a building there on lot 4, block 14. How old a building is that?

A. An old building moved from Paraclifta up there.

Q. About what year to the best of your information?

A. About forty years ago.

Q. The next lot is lot 5, block 14, assessed valuation

399 $200.00, assessed benefits $180.00. State the nature of the improvements on that lot.

A. There are no improvements to amount to anything.

Q. The next lot is lot 6, block 14, assessed at $200.00, assessed benefits $180.00.

A. That is the same; no improvements.

Q. Now, I want to go to lot 17 shown on page 49, block 17 of survey A to the town of Lockesburg, Arkansas, showing a total present assessed valuation of $3,000.00 and assessed benefits of $1,800.00. Explain what kind of improvement is on that lot.

A. There is a two-story brick building.

Q. Who owns the building?

A. Doctor Norwood.

Q. Do you know what that building cost Doctor Norwood?

A. No sir.

Q. Now I will ask you to turn back here to block 1 of Survey A to the town of Lockesburg, Arkansas. There is an assessment there against Lida Edwards on that block—assessed valuation $500.00 and assessed benefits $300.00. State to the court the nature of the improvements on that lot.

A. It has a dwelling on it.

Q. What size dwelling?

A. I suppose about five rooms to it.

Q. What is the market value of that dwelling and lot?

A. About a thousand dollars.

Q. Here is lot 3 assessed to the Southern Land & Townsite Company. Do you know who owns that lot now; whose residence is built there?

400 A. I don't think there is any residence on there; Bob Grady's I believe.

Q. What is the present assessed valuation of that?

A. $1,150.00.

Q. What is the total assessed benefits against that?

A. $960.00.

Q. What is the approximate cost of that residence, if you know?

A. I think it cost about $2,500.00.

Q. What is the size of that little residence?

A. Five rooms, I think.

Q. Is it a frame house?

A. Yes, a frame house built on the bungalow style.

Q. Then the next block is block 4, assessed here to A. J. Clinghan. Who owns that residence property now, if you know?

A. Fay Park.

Q. What is the assessed valuation?

A. Six hundred dollars.

Q. What is the assessed benefits?

A. Six hundred.

Q. Now, I want to get some acreage property inside of the corporate limits to the town, Mr. Grady, but outside of the platted part of the town. Say, take Judge Steel's residence and Mr. Bizzell's residence?

A. Here is Mr. Bizzell's house.

Q. All right, what is the acreage there?

A. Five and a quarter acres.

Q. Does it all go together?

401 A. Yes sir.

Q. There are five acres then in the Bizzell property?

A. Yes sir.

Q. What was its present assessed valuation at the time you made that assessment?

A. Seven hundred.

Q. What is the total assessed benefits assessed against it?

A. Six hundred dollars.

Q. Is that a frame residence?

A. Yes sir.

Q. About how many rooms?

A. Seven rooms.

Q. Can you find Judge Steel's assessment? I see here the assessment of R. F. Hunsucker. Is that residence property to the town of Lockesburg?

A. Yes sir.

Q. What is the total assessed valuation?

A. $700.00.

Q. What is the benefits assessed against that property by your board of assessors?

A. $540.00.

Q. I notice here on page 29 assessed against F. C. Floyd. Is that residence property?

A. Yes sir.

Q. What is the acreage in that?

A. Two and ninety hundredths acres.

Q. What is the assessed valuation?

A. Five hundred dollars.

402 Q. What is the total assessed benefits?

A. $360.00.

Q. What kind of a residence is that?

A. I think that is a six room house.

Q. Frame house?

A. Yes sir.

Q. How long has it been built, if you know?

A. I don't know; quite a while; a number of years.

Q. How long have you known of it?

A. I have known it twenty-five years.

Q. Was it a new house then?

A. No sir.

Q. Le- me see Judge Steel's assessment. That is three and 75 hundredths acres. What is its total assessed value?

A. $1,100.00.

Q. What is the total assessed benefits?

A. $400.00.

Q. Here is the A. C. Steel residence. What is the present assessed valuation?

A. $1,200.00.

Q. What is the total assessed benefits?

A. $720.00.

Q. Now, adjacent to that and just across the street, who owns that property?

A. Clarence Arnold.

Q. C. M. Arnold?

A. Yes sir.

403 Q. How many acres in the C. M. Arnold residence property?

A. Five acres.

Q. What was its assessed valuation at the time you made your assessment?

A. Seven hundred dollars.

Q. The assessed benefits against that property?

A. $420.00.

Q. Now, here is a forty acres assessed as the southwest, southeast, section 23, township 9, south range 30 west. Who owns that forty acres?

A. D. M. Terhune.

Q. What was the assessed valuation on that property?

A. $600.00.

Q. What is the total assessed benefits against it?

A. Six hundred.

Q. State to the court the nature of the land with reference to being fertile, the kind of improvements and the amount in cultivation on that forty acres.

A. There is a little house on it—about a four room house. The land is principally in the creek bottom.

Q. Is it used for farming purposes?

A. Used for a pasture only; pretty well covered with Bermuda grass.

Q. Is it fertile land, or not?

A. Yes, the land is pretty fair land.

Q. Here on page 39 there are two acres assessed to Nona Hooper, valuation $450.00. What are the benefits assessed against that piece of land?

404 A. Six hundred.

Q. State the nature of the improvements on that two acres, Mr. Grady.

A. It has got a dwelling on it.

Q. What size house and the kind of house?

A. It has an old house, probably eight rooms.

Q. Frame house?

A. Frame house.

Q. From whom was that property purchased, and when, if you know?

A. Hooper bought it from Rupert Steel.

Q. Do you know what he paid for it?

A. No sir.

Q. Now, I want to go back to farming lands, say go to section 30, township 9, south, range 29 west; at the top of page 46 I find thereon

forty acres of land assessed to D. M. Bizzell. What is the assessed valuation of that forty acres?

A. $300.00.

Q. What are the benefits extended against it?

A. $480.00.

Q. State to the court the kind of land and improvements on that.

A. Well, it is red land. It has got one house on it; just a common frame house.

Q. Now, adjacent to that is the northeast quarter of the southeast quarter, same section, township and range, owned by the same man. What was its assessed valuation at the time you made this assessment?

405 A. Two hundred dollars.

Q. What is the total assessed benefits you made against it by reason of this improvement?

A. $320.00.

Q. I will ask you to take the west half of the northeast quarter, the same section, township and range, containing 80 acres, and what was the assessed valuation for State and County purposes on that eighty at the time you made this assessment?

A. $410.00.

Q. What are the total assessed benefits on it?

A. $800.00.

Q. That is a part of the Murf Coulter Farm about which he questioned you?

A. Yes sir.

Q. State to the court what improvement is on that eighty?

A. It has a building on it.

Q. Frame building?

A. Frame building—two story.

Q. Now, take the northeast quarter of the northwest quarter, forty acres. What was its assessed valuation at the time you made your assessment?

A. $200.00.

Q. And what benefits did you assess upon that?

A. $480.00.

Q. State to the court the improvements, if any, upon that land.

A. Part of it is in cultivation; there are no buildings on it.

Q. I will ask you about the fractional west half of the

406 southwest quarter.

A. That belongs to J. Isbeck.

Q. Assessment shown on page 46 of the record, acreage eighty-one and 30 hundredths. What was the assessed valuation at the time you made that assessment?

A. $500.00.

Q. What were the total benefits assessed against that eighty?

A. $640.00.

Q. State to the court the kind of land, the nature of the land and the improvements, if any, with reference to the buildings and the amount of land improved or in cultivation on that eighty.

A. I suppose there is about 60 per cent of it has been in cultivation in time, but it hasn't been cultivated for the last several years, and the building is an old building on it; it is pretty well run down.

Q. Is that fertile land or land that is generally considered worn out?

A. It is pretty badly worn; old land.

Q. About what per cent of that eighty was in cultivation at the time you made this assessment?

A. I guess 60 per cent of it.

Q. Cleared?

A. It is cleared up and used principally for pasture.

Q. Here is eighty assessed to Pruitt; it is the south half of the southeast quarter of the same section, township and range, assessed valuation $400.00. What was your assessed benefits against that eighty?

A. $640.00.

407 Q. State the nature of that land, the amount, the improvements and kind of improvements, if you know.

A. There are no improvements on it at all.

Q. Unimproved and non-productive land, is it not?

A. Yes sir.

Q. The north half of the northeast quarter of section 31-9-29, eighty acres. What was the assessed valuation?

A. Six hundred dollars.

Q. What was the assessed benefits extended against it?

A. $560.00.

Q. State the nature of that land, the amount in cultivation and so forth. If you are not sure about it you had better look on the county map to get your locations.

A. I don't remember that place.

Q. I will ask you if you know the John Coulter place?

A. Yes sir.

Q. Having your memory refreshed, is that part of the land now owned by John Coulter?

A. Yes sir.

Q. What is the assessed valuation of that eighty for State and County purposes?

A. Six hundred dollars.

Q. And what was the benefits you extended against that?

A. $560.00.

Q. Now, next I will ask you about the fractional southwest quarter of the northwest quarter, same section, township and range, 41 acres. What was the assessed valuation?

408 A. $150.00.

Q. What was the benefits extended against it?

A. $140.00.

Q. Now, Mr. Grady, I will ask you to turn to sections 20 and 29 the same township.

A. There is 20.

Q. Northeast quarter of the northeast quarter, 40 acres; what was that valuation?

A. Two hundred dollars.
Q. What was the benefits you extended against that tract of land?
A. $320.00.
Q. The southeast quarter of the northeast quarter, same section and range, 40 acres. What was its assessed valuation?
A. $180.00.
Q. What was the benefits extended against it?
A. $320.00.
Q. Now here is seventy acres of land in the west half of the northeast quarter, same section, seventy acres. What was its assessed valuation?
A. $350.00.
Q. And what was the benefits extended by you against that tract of land?
A. $560.00.
Q. Here is the south half of the northwest quarter, the same section. How many acres?
A. Eighty acres.
Q. What was its assessed valuation?
409 A. $460.00.
Q. What are the benefits extended against it?
A. $640.00.

Mr. McDonough: I want to make this objection to the evidence that is now being brought out. It is all shown by the record itself. It would be entirely permissible to take a reasonable number of those illustrations for the purpose of illustrating some point or bringing out some point, but to go substantially through the entire record, seems to be unreasonable.

Court: It seems it is already in.

Mr. Edwards: It was brought out by Mr. McDonough's cross-examination. I wanted to show by the assessor he was thoroughly familiar with the district, the nature of the lands, the kind of improvements and its value.

Court: I think you have demonstrated that so far as this assessor is concerned; I don't know about the others.

Q. Mr. Grady, I want you before we quit that to state the value of that land in sections 29 and 30 and section 20 that I have asked you about. What is the average value of the land?
A. About fifty dollars an acre or twenty-five.
Q. That is approximately the best farming lands in the district, is it not?
A. Yes sir.
Q. The highest priced farm lands in this improvement district?
A. Yes sir.
Q. And the best improved lands in this district?
A. Yes sir.
Q. And you state its value is from twenty-five to fifty
410 dollars per acre?
A. Yes sir.

Q. That is its market value?
A. Yes sir.

Recross-examination:

Q. You referred to a tract of land on page 28 or a piece of land belonging to Judge Steel. That is Judge J. S. Steel, who is the judge presiding in this case, is it?
A. Yes sir.
Q. Are there any other tracts of land in the district belonging to Judge Steel?
A. Yes sir.
Q. Are they shown in the record?
A. Yes sir.
Q. Can you turn to that?
A. There it is.
Q. That is a tract of seven acres shown on page 32?
A. Yes sir.
Q. Present value is what?
A. Seventy dollars.
Q. Benefits?
A. $42.00.
Q. Is there any other? How many tracts on page 32 or how much acreage on page 32?
A. 237 acres.
Q. That is all in section 26, township 9, south range 30 west, is it?
411 A. Yes sir.
Q. Do you know whether or not there are any buildings on any of that land?
A. No buildings at all.
Q. The land is assessed there at four dollars an acre, five dollars an acre and six dollars an acre, and four dollars and a half an acre, is it not, and some at six dollars an acre?
A. It is.
Q. You were asked about the improvements on a number of tracts of land. I will ask you if you know whether or not there is any improvement on the lands of W. F. Woods, shown on page 1 as the southwest quarter of the southwest quarter 25-8-31.

Mr. Edwards: If the court please Mr. McDonough objected because, he says, the record speaks for itself.
Court: He can take isolated cases.
Mr. Edwards: Save exceptions.

A. I am not well acquainted with this part of the district.
Q. You have on the same page two tracts of land, eighty acres, each, one belonging to Fannie Campbell and the other belonging to Sarah A. Snapp, each assessed at two dollars per acre. Do you know whether there are any improvements on those lands?
A. No sir.
Q. In the next line below that there is an eighty-acre tract assessed

at two and a half per acre. Do you know whether there are any improvements on that?

A. No sir.

Q. Can you take any land on page one and say whether there are any improvements on any of that land?

412 A. There is a forty I know.

Q. Whose is that?

A. E. A. Herring's.

Q. Forty acres?

A. Yes sir.

Q. That is assessed at $3.00 an acre?

A. Yes sir.

Q. The land immediately above it is assessed at $3.75 an acre. Do you know whether that has any improvements on it, or not?

A. I don't know whether there are any buildings on it.

Q. On page 2 can you select from that any land that has any improvements on it?

A. No sir, I don't know as I know for sure.

Q. That land is assessed at *som* much per acre, as shown by the list, isn't it?

A. Yes sir.

Q. On page 2 it is assessed at a certain price per acre as shown on that list?

A. Yes sir.

Q. And so on throughout that list?

A. Yes sir.

Q. Except in town you didn't assess it per acre, did you?

A. No sir.

Q. Unless it was 'acre' there, you assessed it 'per acre,' didn't you?

A. Yes sir.

Redirect examination:

Q. I don't think you understood the question of Mr. McDonough in assessing the acreage property. Did you assess it in pro-

413 portion to the number of acres in the tract, that is, on the acreage basis or on the basis of its assessed valuation?

A. We assessed it on a basis of its valuation of the total benefits; we didn't figure it by the acre at all.

Q. Then in answer to his question a minute ago when you stated you assessed it at so much per acre, that was an error, was it not, or misunderstanding of his question?

A. I didn't understand his question that way. We didn't assess it that way at all on an acreage basis.

Q. I will ask you to look at pages 1 and 2 of the record, and under the heading of "assessed benefits per acre" there are figures there showing $5.00 per acre, $2.50 per acre, and so forth in a column; I will ask you if any those figures were made by you or any member of your board of assessors?

A. They were not.

Recross-examination:

Q. Mr. Grady, isn't it true, that so far as small tracts are concerned—two acres, three acres and a quarter of an acre, lots and blocks that you took into consideration that they were for residence purposes where they had residences on them and assessed them in accordance with the value of the property and the improvements?

A. Yes sir.

Q. But in acreage you didn't attempt to determine whether there was an improvement in its value, did you?

A. Yes sir, where we knew the amount of the improvement.

414 Q. But where you didn't know you just took it without reference to whether it had an improvement on it or not?

A. We were governed a whole lot where I wasn't acquainted by the assessment made by the party himself because we took it for granted he knew more about the value of the land than we did, and where we were personally acquainted with it we raised it sometimes.

Q. If you didn't make the figures "Assessment per acre" who did make them?

A. I have no idea.

Q. They were authorized by the board of assessors?

A. Not that I know of.

Q. Is that book your work?

A. Yes sir.

Q. Are you denying that is your work?

A. No sir, that column 'per acre' is not our work.

Redirect examination:

Q. I believe you stated before that you had served two or three terms *ad* deputy county assessor for this county?

A. Yes sir.

Q. Now, in making the assessments on the real property in this county, from which you obtained the assessed valuation of the property, does that assessment include the improvements upon the lands —the buildings?

A. Yes, it is supposed to.

Q. In assessing a piece of real estate for State and County purposes, is it not true that the improvements are assessed with the land.

415 A. Yes sir.

Recross-examination:

Q. You say 'it is supposed to.' Then that means you do not know of your own knowledge in every case whether it was so done?

A. No sir.

Witness excused.

416 Doctor M. L. Norwood, called by the defendant, being duly sworn, testified as follows:

Q. Give your name, age, residence and occupation.

A. M. L. Norwood; residence, Lockesburg, Sevier County; age forty-seven.

Q. What is your profession?

A. Practicing medicine.

Q. Are you one of the commissioners of Road Improvement District Number 3 of Sevier County?

A. I am.

Q. Are you reasonably familiar with the lands—real property—in this district?

A. Reasonably so, yes sir.

Q. The assessors of Road Improvement District Number 3 have assessed against the property of the Kansas City Southern and the Texarkana & Fort Smith Railway Companies in the district benefits to the amount of $21,270.00. State to the court whether or not that is in your opinion an arbitrary or excessive assessment.

A. Well, I don't know that I am competent to answer that question.

Q. Well, I will ask you, in proportion to the assessments made upon the other property in the district, do you consider that an arbitrary assessment?

A. I doesn't look to me like it is, in proportion to the other.

Q. In your opinion will the railroad property of the district be benefited by reason of the improvements made by this improvement district?

417 A. I think it will.

Q. State to the court why and how you think the railroad property will be developed.

A. By community interests in one way; by increased tonnage to go over the road would be another way and increased valuation of their property.

Q. You own some property in this improvement district, do you not?

A. I do.

Q. Your residence property and your office building are located in this district, are they not?

A. They are.

Q. On what block is your office building, Doctor?

A. Block 17 in the town of Lockesburg.

Q. I find that property assessment entered on page 49 of the assessment record, showing an assessed valuation of three thousand dollars, and benefits extended against that property of $1,800. State to the court what that building and lot cost, and what it is worth.

A. It cost between six and seven thousand dollars when it was built in 1913—the building did.

Q. The value of lots there adjacent to it in the same block is worth about what?

A. I think around $7,500.00 for the building and block of land.

Q. In what block is your residence?

A. That is block 1, I believe, in Selridge Addition.

Q. I find here block 1 assessed to — and block 3 the same, and block 4 to M. L. Norwood?

418 A. Block- 4, 5 and 6 I own in Selridge Addition.

Q. Your home is in block 4?

A. Yes sir.

Q. Assessed valuation, $750.00, and assessed benefits against your residence, $540.00, as shown on page 51 of the record. State the size of the residence, and kind, and the age of the residence.

A. Seven rooms; two story; built thirty-five years ago.

Q. Frame building?

A. Frame building.

Q. Its present market value, if you know, what that will be?

A. Between fifteen hundred and two thousand dollars; something like that.

Q. Doctor, are you acquainted with the eastern end of this improvement district and the western part of Howard County adjacent to the district?

A. Yes sir.

Q. Which way does the traffic from that territory go at the present time?

A. It comes to Lockesburg over the route Number 3—Improvement District Number 3.

Q. Do you know the kind of products that move from that section of Howard County into Lockesburg over this road Number 3?

A. The first crop they usually bring on is radishes, cucumbers, strawberries, spring beans, sweet potatoes, cantaloupes, cotton.

Q. What about the products from the sawmills in that section of territory?

A. There are three sawmills I know of there that haul their lumber over that road to Lockesburg.

419 Q. How many of them in Howard County?

A. Two.

Q. Can you give the court an estimate of the out-put and the amount of lumber that has been moved over the road this year?

A. I cannot; I just see a good many wagons hauling every day, but what it would amount to in quantity I don't know.

Q. State to the court whether or not in your opinion the traffic from that section of the country—the east end of this district and the west part of Howard County not embraced within the district—is induced to come to Lockesburg by reason of the improved highways.

A. I think it is.

Q. Do you know what the road conditions are on east from the eastern end of this highway?

A. For about a mile east of the eastern end of this highway it is a fairly good road; from there on it is not so good.

Q. How was that mile of road through the bottom there built, if you know?

A. They passed a subscription list in the town of Lockesburg; they took up a collection to gravel the road.

Q. Then that one mile through the bottom in Howard County was improved principally by public subscription from the town of Lockesburg?

A. If there was any subscription anywhere else I don't know it, but I know there was one in the town of Lockesburg for that purpose.

Cross-examination:

420 Q. In giving it as your opinion that the railroad property of this country would be benefited, you base that, do you not, upon the assumption that the building of the highway will increase the traffic for the road?

A. I do largely.

Q. You have made no estimate of that yourself?

A. No sir, I don't know how much it would; I know it would be increased very much, but how much I don't know.

Q. By saying you know it would be increased, you don't mean to say that you know what would take place in the future?

A. Only judging from what people tell me that they are going to plant a great deal more of truck when the highway is completed.

Q. Then, it is based to some extent upon hearsay testimony?

A. To some extent.

Q. That is a conjectural estimate of probable future development of increase in traffic, is that right?

A. In part it is, and in part it is not.

Q. It couldn't be anything else, could it?

A. Well, we know already there is a good deal more of truck there, and it is increasing.

Q. The road is not completed yet, is it?

A. No sir, but even since it is graded without being completed the traffic has increased some.

Q. Whether or not is was produced by the road you do not know?

A. Yes sir, I know it is by the road because you couldn't get over the road before.

Q. It went over the Bankhead Highway, didn't it?

A. No sir.

421 Q. Hasn't there been a public highway between Lockesburg and De Queen—two of them—for four years past?

A. Yes, but they were not travelable all the time by a great deal.

Q. Very good road most of the time?

A. No sir, I have seen the time when two horses couldn't pull an empty wagon over them.

Q. You have made no calculation as to the increase that would come to the Kansas City Southern Railroad?

A. No sir.

Q. You are not a railroad man?

A. No sir.

Q. You have never had any railroad experience?

A. No sir.

Q. You have had no experience in the valuing of railroad property?
A. I have not.
Q. Nor in the making of the rates?
A. No sir.

Redirect examination:

Q. How long have you been engaged in the practice of medicine in this improvement district in this territory?
A. Twenty-six years.
Q. At the time this assessment was made did the territory embraced within this district have any improved highways connecting with the Bankhead Highway except here at De Queen?
A. At what time?
422 Q. At the time this assessment record was made in 1919.
A. No sir, it didn't.
Q. There has since that time been a road known as Road Number 7 improved?
A. Yes sir.
Q. Running from Lockesburg north and south?
A. Yes sir.
Q. Has there been any noticeable change in the agricultural products in this improvement district since this good roads program was commenced?
A. Yes sir.
Q. State to the court what that was and the extent to which it goes.
A. Well, there has been less cotton produced, and a great deal more truck, such as cantaloupes, strawberries, beans, potatoes, goubers.
Q. You are thoroughly familiar with the territory east of Lockesburg, are you not, in the western part of Howard county?
A. I am thoroughly familiar with that east of Lockesburg to the Saline river, and fairly so in the western part of Howard county; but not as much so as I am in the other territory.
Q. You are personally acquainted with 90 per cent of the landowners in that territory, are you not?
A. Between Lockesburg and the Saline River I think I am.
Q. Hasn't the improvement of this road had a tendency to direct the trade from that section and also from the western part of Howard County to Lockesburg over Road Number 3 in preference to hauling it over a rough road to Nashville and other markets on the
423 Missouri Pacific Railroad line?
A. It has.
Q. Doctor, the highway being improved in this Road Improvement District is now being graveled and surfaced, is it not, at the present time?
A. It had all been graded up east of the Cosatot and where there were some erosions dirt work is being put back there, and the dirtwork is being graveled at the present.

Q. The work is under construction?
A. Yes sir.

Recross-examination:

Q. You mentioned this morning about some place on one of these roads where two yoke of oxen could probably not pull an empty wagon?
A. I think I said horses and mules.
Q. Where was that place?
A. There is quite a number of them; some in the Coulter land and some in the Saline bottom.
Q. On what road?
A. On 3.
Q. Since it has been constructed?
A. No sir, before that.
Q. That was in the winter time and bad weather?
A. Yes sir, and bad in the spring during the strawberry season.
Q. In ordinary seasons pretty fair roads have been between De Queen and Lockesburg, have there not, except, a few places on the lower road?
424 Q. On 3, you mean?
Q. I am not speaking about Road 3; I am speaking about the roads that existed prior to the construction of 3.
A. In dry time you could get over them.
Q. Very good road, wasn't it?
A. No sir.
Q. The road over which the Bankhead highway runs was always a good road, wasn't it?
A. I don't think so.

Redirect examination:

Q. The Bankhead Highway is practically a new road in the county?
A. Part of it.
Q. Until it was improved how was it?
A. Bad.
Q. Until Number 3 road was improved was it possible to come from Lockesburg to De Queen in an automobile or by truck?
A. It might have been possible, but a fellow went over it with fear and trembling and you couldn't make any time over it. It might have been possible to get over it but not with any load.
Q. Was it practical to travel that road with a car or truck?
A. No, it wasn't practical to travel it.

Recross-examination:

Q. You mean where road 3 now is?
A. Yes sir.

Witness excused.

425 T. W. PARK, called by the defendant, being duly sworn, testified as follows:

Direct examination:

By Mr. Edwards:

Q. State your name, age and place of residence.
A. T. W. Park; 36 years of age; Lockesburg, Arkansas.
Q. In what business are you engaged there?
A. I am a farmer and also sales agent for the Lockesburg Berry & Truck Association.
Q. As sales agent how many cars of truck and berries and potatoes and peanuts have you shipped up to date in the year 1921?
A. Since January 1st approximately 125 cars.
Q. To what markets do those shipments go principally?
A. As well as I remember they all went to the northern markets.
Q. Principally through Kansas City to Chicago?
A. Yes sir.
Q. Toledo?
A. None to Toledo; I never shipped any cars to Toledo. I have in the past, but not this year.
Q. Those shipments are routed how from Lockesburg to their destination?
A. Over the De Queen & Eastern to De Queen, over the Kansas City Southern to whatever point I might divert it on the main line.
Q. To what point on the Kansas City Southern are your shipments diverted?
A. Ninety per cent to Kansas City.
Q. The other ten per cent to what points?
426 A. They are usually given to the Frisco to some point up the line there, sometimes at Fort Smith and sometimes at Neosho, I believe it is; the agent usually handles that.
Q. What is the average freight per car? Just state to the court the minimum or maximum if you don't know the average about what the freight is per car on those shipments.
A. I don't remember any going under two hundred dollars, and the largest freight I paid was on a car of hickory nuts, about a thousand dollars.
Q. In addition to these carload shipments do you make other shipments?
A. Yes sir.
Q. To any considerable extent?
A. Yes sir.
Q. How is it routed from Lockesburg—those shipments?
A. I never route express shipments, but they all go to De Queen and are given to the Kansas City Southern there, going north or south. Now, in the spring of the year the radishes all go north and the *spring* beans all go north on account of the markets. You couldn't ship them south because there are too many home-grown beans, but it seems in the fall of the year the home-grown beans go

south up to a certain time. Along in October there are no beans grown in the south, and the northern beans are on and they don't go there.

Q. What about the shipments of cucumbers and tomatoes in the spring?

A. They all go north.

427 Q. Your shipments of cantaloupes and watermelons?

A. They all go north.

Q. Your sweet potatoes?

A. They all go north.

Q. Peanuts?

A. Peanuts all go to St. Louis.

Q. Where is the cotton from Lockesburg shipped to?

A. I am not in the cotton business.

Q. If you know you can state.

A. It goes to the compresses at Texarkana and Ashdown and Hope; possibly they may send some to some Texas points—I don't know—but I am there in the depot quite a bit and I notice them billing it that way.

Q. How long have you been the sales agent there?

A. Three years.

Q. Have you ever made a shipment of any of those products that were not routed over the Kansas City Southern one way or the other from De Queen?

A. I never have routed a car another way.

Q. Will it ever be practical with the railroad facilities now in the country to ship and deliver the products in that community over any other route?

A. Not for me; the Kansas City Southern gives me quicker service—quicker deliveries—and on perishable products there must be a quick delivery.

Q. And for that reason it wouldn't be practical for you to ship perishable products over any other route except the Kansas

428 City Southern?

A. No sir.

Q. How was the principal part of the strawberry crop handled this year?

A. We had to truck it to De Queen. The strawberries were not in large enough volume to load cars and we trucked them to De Queen. Year before last we sent them to Horatio.

Q. Why did you send to De Queen this year in preference to Horatio?

A. We could get them over so much easier.

Q. You had better roads?

A. Yes, I sent a truck over this road. It would go to and tap the Bankhead Highway up about the Gilliam farm there and come across here.

Q. You shipped some truck up Number 3 by truck?

A. Yes sir, Number 3 wasn't finished; in rainy seasons I couldn't come over that.

Q. When Number 3 is completed will that be your most direct and practical route?

A. I will say six or seven miles and it will save several hills. This road over here is very hilly after you get this side of the river.

Q. Then Number 3 will be the most direct and practical route to go in your truck when it is finished?

A. Yes sir.

Q. Did you not lose any berries or truck by reason of bad road conditions between Lockesburg and Horatio?

A. I didn't take any berries to Horatio this year.

429 Q. I am speaking about the year before.

A. Yes, I lost quite a few—not quite a few, there were three days' time we were not getting any berries at that time. Usually one truck would bring the berries year before last.

Q. Did you ever start a shipment of berries—a truck—from Lockesburg to Horatio when the road was so bad you could not get there or they didn't reach there in condition for shipment?

A. Yes sir, I have. On about two or three different occasions after a rain we couldn't get over that road with a truck and we sent them in wagons; one day in particular the wagon mired down and the berries had to be unloaded, and the driver got them muddy and they were all turned down.

Q. They had to be unloaded then on the road, did they?

A. Yes sir.

Q. That shipment then was a total loss to the truck growers?

A. A total loss to me.

Q. The freight rates were lost to the railroad company?

A. They didn't haul it, no sir.

Q. About how many cars did you ship in 1920?

A. We had twenty-five cars of cantaloupes; and there was around twelve or fifteen cars of sweet potatoes.

Q. Now since the good roads program has commenced in this territory I will ask you if there has been a change in the agricultural development and out-put of this territory.

A. Yes sir, there has; if you want me to cite you to the conditions I can do so.

Q. Go ahead.

A. When the Number 7 road was finished, that is, the road from Lockesburg south, I spoke of going over this road with the

430 berries that begins about the Gillham farm and runs south.

Q. That road intersects with Number 3 at Lockesburg, does it not?

A. Yes sir.

Q. All right.

A. The people are beginning to grow more berries. This last year there was Mr. Enoch, and Mr. Pickens bought a truck this last spring to haul his berries on.

Q. How far did Mr. Enoch truck his berries this year?

A. It is around eight and nine miles.

Q. To Lockesburg?

A. Yes sir.

Q. And from there they were trucked to De Queen, were they not?

A. Yes sir.

Q. That makes a distance of how many miles these berries were hauled on trucks before they were delivered to the Kansas City Southern Railroad?

A. Eight miles from that place to Lockesburg, and I think it is 17 the way we have to come to get to De Queen.

Q. Makes a total of 25 miles those berries were trucked into this place?

A. Yes sir.

Q. I will ask you if John Wilder and some other shippers haul truck even further than that?

A. John Wilder doesn't ship with me. He has Tom Penny's place rented; that is about a mile further. He hauls berries to Lockesburg and over this road and on into Horatio.

431 Q. They leave Lockesburg on the Number 3 road, do they not?

A. Part of the time and part of the time he had to come around.

Q. By De Queen?

A. Yes sir, which would make a distance of twenty-five miles and a distance from here to Horatio.

Q. You mean the distance twenty-five miles plus the distance from De Queen to Horatio?

A. Yes sir .

Q. Now, what would be the total amount of that distance those berries were trucked?

A. How far is it from here to Horatio? I don't know.

Q. You just approximate that yourself.

A. Well, it is about eight miles, I guess. It would be about thirty-three miles.

Q. In your own way state to the court about the increase of acreage in strawberries during the past two years, whether or not more land is being set to strawberries.

A. There is over a hundred acres there now; two years ago there wasn't more than twenty.

Q. State whether or not other land at the present time is being cleared and put in preparation for strawberries.

A. There is something like forty or fifty acres going in now. Land is being cleared for that.

Q. Prior to the time your truck industry was started there, what was the principal and staple crop of that territory?

A. Corn and cotton.

Q. What was the money crop?

A. Cotton.

432 Q. They never shipped any corn from there, did they?

A. No sir, it was always shipped in.

Q. And the shipments of cotton were ordinarily made to Texarkana to the compress at that place, were they not?

A. So far as I know.

Q. What per cent of increase in this truck industry has followed the building of this improved highway?

A. Well, the truck industry has just begun to grow. Say we have 25 cars last year and 82 cars this year of cantaloupes; you can't altogether lay that to roads or anything else. Our conditions and crop conditions have lots to do with that, but so far as the acreage was concerned we had something like four hundred acres this year more than we had last.

Q. Do you remember about how many acres you had last year?

A. Around two hundred acres; I had a list of each member of the association and the exact number of acres he was to plant but sometimes a man would get a bad stand and he didn't work it; it is hard to tell exactly how many but it is approximately six hundred acres.

Q. Now, the variety of crops being grown—are you inducing the farmers to grow new varieties?

A. Yes, we have never grown radishes until this year; we have never shipped any beans to amount to anything until this year; and we never shipped any cucumbers before.

Q. State whether or not the acreage in those particular crops is to be increased during the next year.

A. Yes sir.

Q. Is it your practice to take orders from the farmers for
433 their seeds, their baskets and their crates?

A. Yes sir.

Q. You keep a record, do you, and know the amount of acreage that is grown by each individual farmer?

A. I do.

Q. In other words, do you pledge them to grow so much truck?

A. Yes sir.

Q. You have them to sign a pledge card?

A. Yes sir.

Q. Then there will from your records be an increase?

A. I couldn't say from my records because that isn't signed up. Usually they don't do that until January. It hasn't been signed up for this next year, but I can tell pretty well in talking to the farmers. We have had two meetings of the association and I have placed my order for cantaloupe crates; I always do in January and I have to get this information before I do that.

Q. Unless the strawberry crops are killed by frost or some other cause will you be shipping in carload lots there next year?

A. Yes, the express company has already agreed to give us a set of express cars there next year.

Q. The railroads haul those express cars for the express company, do they not?

A. Yes, the strawberries are shipped where you can get them in express cars.

Q. State what products you received last year from the eastern end of this district and from the western part of Howard County adjacent to the district. In other words, I want to make a com-
parison between last year and this year of the products
434 received.

A. I don't exactly understand the question.

Q. Are you now receiving products for shipment from the eastern part of Road Improvement District Number 3 and from the western part of Howard County?

A. Yes sir.

Q. In large quantities or small quantities?

A. I bought one car of peanuts that was loaded yesterday and today that came from western Howard County, and I shipped two cars one day this week—Monday, I believe it was—and the larger part of one of those cars was from Howard County.

Q. Prior to the construction or improvement of this highway did you get any truck or produce from that section of Howard County?

A. No sir, not to amount to anything.

Q. Do you know whether or not the truck industry is growing and on the increase in that section?

A. Yes, it is. About two years ago or two or three Mr. Goodlet and Yance Roberts and I have forgotten the other fellow's name came over there and told me——

Mr. McDonough: I object to that conversation.

Court: That wouldn't be competent.

A. I will state it this way, with the help of two men I raised a public subscription and with my own money I got the road tractor—it is a big tractor that pulls one of those graders—and graded up the road from the Saline river out about four miles on the other side, and this last summer those farmers within themselves helped gravel the road from the river out to the hill a distance possibly of about a half-mile.

435 Q. This number 3 road connects at the river there you spoke of?

A. Yes sir.

Q. And it was what induced the people living in that part of Howard County to bring their produce and agricultural products to the market at Lockesburg?

A. It was an agreement with them and myself.

Q. That they would do that?

A. Yes sir.

Q. Those products since then have been coming to Lockesburg and over Road Number 3?

A. Yes sir.

Q. Was any part of the strawberries in your section killed this year?

A. Yes sir, that is, the plants were not killed; the crop was cut short.

Q. Now, is it practical to haul those berries and other truck on trucks to De Queen over these hard surfaced roads without injuring them?

A. We do it.

Q. And deliver them here in good condition?

A. Yes sir.

Q. You are acquainted with the character of the soil in Road District Number 3 pretty well, are you?

A. Yes sir, expecially the eastern part and—all of it.
Q. From the Cosetot east?
A. Yes sir.

Q. What is that soil better adapted to? Is it better adapted
436 to truck than it is to cotton?

A. I can only explain my view point; I don't know whether you will allow me to do it or not. The lands in that country have been in cultivation for years; the farmers in that country never have up until now given much attention to terracing and trying to hold their soils, and they are more or less worn out; and since this truck business has come in there they are re-claiming a whole lot of that land, and a greater part of it is not fit for anything else only to grow truck; what I mean is a large per cent.

Q. Then the character of the land and the condition of the country there is better adapted to truck growing than the old cotton crops we used to raise?

A. Fifty per cent more I should think.

Q. In your opinion which of the two roads, the Kansas City Southern or the De Queen & Eastern Railroad will receive more benefit from the construction of this improved road Number 3?

A. To give my honest opinion——

Mr. McDonough: Objected to as not competent, relevant nor material; doesn't tend to prove any issue here.

Court: The question is whether or not there is any distinction between the two railroads.

A. I should think it would hurt the De Queen & Eastern.
Q. Explain why.
A. Owing to the freight rates there is a great many commodities—you take a small local shipment—can be hauled over this road where you can't—you can haul it over the road cheaper than you can send it over the railroad.

Q. Over the De Queen & Eastern railroad?

437 A. Yes sir. I will tell you why. They charge me 25 cents a crate for berries shipped to De Queen and I get them hauled for 20; another reason is because—it is my information that the railroad that the car originates on gets a larger per cent of the freight calculated than does any other carrier it rolls on; and I should think for that reason it would be beneficial to the Kansas City Southern road.

Q. In other words, the original carrier receives in your kind of shipment something like forty or fifty per cent of the freight, does it not?

A. I don't know the per cent exactly.

Q. But with improved roads it will be then more practical and cheaper to deliver to the Kansas City Southern Railroad at De Queen rather than ship it over the D. & E., would it?

A. In local shipments, understand.
Q. In local shipments, the-, it will?
A. Yes sir.

Cross-examination.

By Mr. McDonough:

Q. What do you mean by local shipments?
A. Any shipments from Lockesburg to De Queen.
Q. You don't mean in carload shipments?
A. No sir.
Q. What per cent of the products which you have been discussing move out of Lockesburg in carload lots and what per cent move in less than car load lots?
438 A. Ninety per cent move in carload lots.
Q. It is better for stuff that moves in carload lots to load it in refrigerator cars at Lockesburg?
A. Yes sir.
Q. That is better business and better for the fruit grower?
A. It is better to get it on ice as quick as you can.
Q. You referred a while ago to Hope. That is on the Frisco railroad, is it not?
A. There are several roads there.
Q. The Frisco is there?
A. Yes sir.
Q. There are other railroads there?
A. Yes sir.
Q. That is where cotton goes to the compress?
A. That is one of the places.
Q. You mentioned other places. The cotton then is starting to what points? Where does it ultimately go?
A. The shipper doesn't know; it is merely compressed in transit.
Q. It goes to the spinners in the east and Europe doesn't it?
A. Yes, some of it.
Q. Some of it goes to Japan?
A. I suppose so; I don't know.
Q. To what extent it goes over the Kansas City Southern and other roads, you don't know?
A. No sir.
Q. You don't know the proportion of charges the Kansas City Southern gets out of a total haul of cotton?
439 A. No sir.
Q. And do you know it of those that move north?
A. I don't know.
Q. Do sweet potatoes go south at any time?
A. No sir.
Q. None of them?
A. No sir.
Q. To what points do the products move that go south?
A. I don't send anything south, I stated a while ago that beans are the only things that I ship south and they go to points in Texas?
Q. Where do they go?
A. Some to Shreveport, Dallas, Austin, Beaumont and San Antonio.

Q. You know the Kansas City Southern doesn't go to Dallas?
A. No sir.
Q. What other points did you mention? New Orleans?
A. I didn't mention New Orleans.
Q. What other points in Texas other than Beaumont and Dallas?
A. Waco.
Q. There are very few of them on the Kansas City Southern?
A. There isn't one per cent on the Kansas City Southern.
Q. Going north the products in that community go to what markets?
A. In carload lots?
Q. Yes sir.
A. They go all the way to Denver; I had one car of cantaloupes to go to New Albany, New York.
440 Q. They go far beyond Kansas City?
A. Yes sir.
Q. Some of them go to St. Louis, do they not?
A. Very few.
Q. Some to Chicago?
A. A great many.
Q. Some to Pittsburgh, Pennsylvania?
A. Some few.
Q. Some to Denver, Colorado?
A. Quite a few to Denver.
Q. Is Albany, New York, as far east as you have gone with them?
A. I think so. There were two cars went to New York City.
Q. Horatio is on the Kansas City Southern?
A. Yes sir.
Q. You mentioned the fact that some of the products that went to Horatio now come to De Queen?
A. Yes sir.
Q. That is true?
A. Yes sir.
Q. If they went to Horatio they would be delivered to the Kansas City Southern?
A. Yes sir.
Q. Those are less than carload lots?
A. Yes sir.
Q. If they come to De Queen they would come where there are two roads, the Kansas City Southern and the De Queen & Eastern? Is that true?
A. Yes sir.
441 Q. At Horatio there is but one railroad?
A. No sir.
Q. That is the Kansas City Southern?
A. Yes sir.
Q. Do you know what railroad extends into Nashville, Arkansas?
A. Yes sir.
Q. What one?
A. The Missouri Pacific and the M. D. & G.

Q. The M. D. & G. connects with the Kansas City Southern at Ashdown, does it not?

A. Yes sir.

Q. The Missouri Pacific is one of the largest railroad systems in this country, is it not?

A. Yes sir, so far as I know it is.

Q. You spoke about there being approximately six hundred acres in certain products that you named, being probably four hundred acres more than at previous times, a part of that six hundred acres, actually wasn't most of it previously planted and cultivated in something else other than the products you mentioned?

A. I should say most of it was.

Q. The agitation and development which you have in mind amounts to a substitution of the crops you are dealing in for other crops that had hitherto been planted?

A. The cotton acreage wasn't cut so much.

Q. It was reduced some?

A. Yes, but not so much.

Q. Instead of planting cotton they are planting these ar-
442 ticles you are dealing in?

A. Yes sir.

Q. You are agitating that, aren't you?

A. Yes sir.

Q. Is it to your interest to develop that as much as you can?

A. Yes sir.

Q. How long have you been there?

A. I was born and raised there.

Q. How long have you been in this business?

A. Three years.

Q. What kind of business were you in before this?

A. Farming.

Q. At Lockesburg?

A. Yes sir.

Q. Do you own a farm there?

A. Yes sir.

Q. What kind of crops do you raise on it?

A. Sweet potatoes.

Q. Do you ship them in carload lots?

A. I will when I ship them.

Q. What did you grow before you shipped sweet potatoes?

A. Some oats and some potatoes. It had been lying out.

Q. Have you investigated the question as to where your market is for sweet potatoes?

A. They are all going north.

Q. To what points?

A. I don't know.

443 Q. Beyond Kansas City?

A. Some will be and some possibly will not.

Q. Did you mention cucumbers a while ago?

A. Yes sir.

Q. Has there been a decrease in the acreage of cucumbers?

A. This is the first year we ever grew any cucumbers.
Q. By 'we' whom do you mean?
A. I speak of the association there—the growers.
Q. You are a representative of the association of growers?
A. Yes sir.
Q. How many?
A. Between two and three hundred.
Q. You make a profit by the seed they use and then sell the stuff out?
A. I don't.
Q. You don't sell the seed?
A. I do.
Q. You are in the employ of the association, are you?
A. I work for a per cent—five per cent on everything except cantaloupes and I get seven for that.
Q. Do you make a profit on the seed at all?
A. No sir.
Q. You don't charge them anything for that?
A. No sir.

Mr. McDonough: Mr. Phelps wants to ask him a question or two.
Court: All right.

Questions by Mr. Phelps:

Q. Will there be as large an acreage of cucumbers raised
444 this coming season as was raised last year?
A. I think it will be a larger acreage.

Mr. Edwards: I want to object to that.
Mr. Phelps: I will withdraw the question, Your Honor.

Examination resumed by Mr. McDonough:

Q. If there is a change in the crops there so as to produce larger quantities, I will ask you if it isn't true that the larger the quantity of beans, peanuts, cantaloupes or anything else won't make it more advantageous still to ship them in carload lots than less than carload lots.
A. I don't think we would ever grow beans to the extent that we would ship in car loads.
Q. Cut out beans.
A. We didn't ship anything else except strawberries but I understand we didn't have enough to load in carload lots but would next year.
Q. But if you do develop it so you can load in carload lots then you will ship in carload lots?
A. Yes sir.
Q. Because that is better, as I understood you to say?
A. Yes sir.

Redirect examination:

Q. Besides the agricultural products, I want to ask you if there are other products in the western part of Howard County that is brought over to Lockesburg for shipment?

A. There is cotton and quite a lot of lumber.

Q. State whether or not from you own personal knowledge
445 there are large quantities of lumber moved over Number 3 and has been all this year practically.

A. Yes sir.

Q. To Lockesburg?

A. Yes sir.

Q. And loaded on the cars there?

A. Yes sir.

Witness excused.

446 T. M. GALLAHAR, called by the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Edwards:

Q. You are one of the commissioners of Road Improvement District Number 3?

A. Yes sir.

Q. Own a farm in the district, do you?

A. Yes sir.

Q. How many acres have you in your little farm?

A. 109 acres all told.

Q. Are you familiar in a general way with the lands and territory embraced in this Road Improvement District Number 3?

A. I think so.

Q. How old are you?

A. Sixty-seven.

Q. How long have you lived in this county?

A. About twenty-five or thirty years, I think.

Q. And in this territory embraced in this district?

A. Yes sir.

Q. Considering the nature of the improvements being made and the general development of the country, the enhancement of the property values, I will ask you if, in your opinion, the assessment of $21,270.00 on the railroad property of the Kansas City Southern and the Fort Smith & Texarkana Railway, in your opinion, is an excessive or arbitrary assessment on that property?

A. I wouldn't think so.

447 Q. In your opinion will the value of the railroad property in the district be increased and enhanced in value?

A. I think so.

Cross-examination.

By Mr. McDonough:

Q. What do you base that opinion on?
A. On the moving and increase of produce.
Q. And that is all, isn't it?
A. And the development of the country generally.
Q. You mean the general development of the country which is a general community benefit? By that, if the country is developed and if increased products are made the railroad will get more stuff to haul?
A. Yes sir.
Q. Then it is the general development or a general community development in the country that you think enables the railroad to get a benefit at all out of the building of the highway?
A. Certainly.
Q. You are not a railroad man?
A. No sir.
Q. Never have operated a railroad, have you?
A. No sir.
Q. And have not given the matter of the cost of operation of a railroad any study, have you?
A. No sir.
Q. You are a member of the Commission?
A. Yes sir.
448 Q. Did you instruct the Board of Assessors as to the amount of money that was necessary to be raised?
A. I don't know whether they were instructed or not.
Q. You didn't do it yourself individually?
A. No sir.
Q. Whether or not your body did it as a body you don't know?
A. No sir.
Q. Who are the other members of the board?
A. Doctor Norwood and Louis McCown.
Q. Did you make any figures in order to ascertain the quantity of increase in traffic which might pass over the Kansas City Southern Railway Company's line?
A. No sir.

Redirect examination:

Q. Where does Louis McCown and the other commissioner live?
A. Louis lives here and Doctor Norwood lives at Lockesburg.
Q. In what business in Louis McCown engaged?
A. The banking business.

Witness excused.

449 W. H. WARDLAW, called by the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Edwards:

Q. What official position do you hold now in Sevier County, Mr. Wardlaw?
A. The Circuit Clerk's office.
Q. In 1920 what office did you hold?
A. County Clerk.
Q. County Clerk of Sevier County?
A. Yes sir.
Q. As the County Clerk of Sevier County was it part of your duty to make the tax books of the county and extend the improvement taxes and other taxes against the real property and railroads of the county?
A. Yes sir.
Q. Turn to the tax books for 1920, which was the tax collected in 1921, was it not?
A. Yes sir.
Q. Here we collect the taxes one year behind, don't we?
A. Yes sir.
Q. In other words the 1920 taxes are collected in 1921 and the 1921 taxes will not be collected until 1922?
A. That is right.
Q. I ask you to turn to the property as listed on the tax books of the Kansas City Southern and the Texarkana & Fort Smith Railway Companies, and state to the Court the total amount of
450 taxes levied and extended there upon the railroad company's property for Road Improvement District Number 3 of Sevier County.

Mr. McDonough: That is objected to.
Mr. Edwards: It goes to the question of whether it is confiscatory or not.
Court: Go ahead.
Mr. McDonough: Save an exception. That is the thing that is in controversy.
Court: That is to get the amount in controversy. I don't know.
To the ruling of the court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

A. The total tax of the Kansas City Southern Railway Company and the Fort Smith & Texarkana Railway Company for Road Improvement Number 3 is $744.45.
Q. That represents what per cent of the benefits extended?
A. That represents three and a half per cent of the total benefits on the Road Improvement District.

Q. Prior to January 1st, 1921, were you the official custodian of the assessment record of Road Improvement District Number 3?

A. Yes sir.

Q. Opposite the assessment of the De Queen & Eastern Railroad Company's property in Road Improvement District Number 3, I find there this endorsement, "$15,000.00 by agreement, 2-5-20." That 2-5-20 refers to February 5th, 1920, does it not?

A. Yes sir.

451 Q. Do you know by whom that entry was made on the record?

A. The entry of that was made by Miss Lewis.

Q. A young lady employed in your office at the time?

A. Yes sir.

Q. Was it made there with your knowledge or under your direction?

A. No sir.

Q. Was that an error or mistake?

A. It is just a clerical error.

Q. That endorsement was intended for another road improvement district, was it not?

A. Yes sir.

Q. And was by you entered upon the record of Road Improvement District Number 7?

A. Yes sir, to where it should go.

Q. And it is purely a clerical error here?

A. Yes sir. Now the reason for that is Road Improvement Districts Number 3 and Number 7 interchanged their assessment records.

Q. And you had posted a 3 over the 7?

A. Yes sir, and in making my endorsement over 7 the young lady overlooked it.

Q. Also put it on Number 3?

A. Yes sir.

Cross examination.

By Mr. McDonough:

Q. In referring to the $744.45, as shown on page 205 of
452 the assessment, an extension of taxes against the Kansas City Southern, that refers to the annual amount which the district proposes to collect if the assessment is held valid?

A. Yes sir.

Q. The total amount is $21,270.00.

Redirect examination:

Q. I wish you would get the resolution of the Board levying this tax as filed in the County Clerk's office, showing its levy for 20 years.

Mr. McDonough: Let it be considered in evidence. I don't know as to its relevancy. I want to save an exception to its relevancy.

Court: That is proper.

To the ruling of the court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Witness excused.

453 RUPERT STEEL, called by the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Edwards:

Q. State your name and age?
A. Rupert Steel; forty seven years.
Q. Were you raised in this county?
A. Yes sir.
Q. Have you been engaged in buying cotton?
A. Yes sir.
Q. I will ask you if you know where the shipments of cotton from Lockesburg and other points in Road Improvement District Number 3 are shipped to?
A. Well, most of it goes to Texarkana up until the compress was built at Ashdown; and some of it stops there now.
Q. What per cent, if any, goes to the Hope compress?
A. Practically none that I know of.
Q. State to the court the total assessed valuation of all the acreage property and town lots in Road Improvement District Number 3.

Mr. McDonough: That is shown two or three times; I don't see any necessity of showing it any more.

Court: I guess two witnesses testifying to it would be sufficient.

Q. In making this assessment upon the property of the improvement district what basis did you use and what plan did you follow?

454 A. We used the assessed value tax books.
Q. Did you divide the district into zones or not?
A. Yes sir, three zones. We divided it into zones and made it on a 60, 50 and 40 basis.
Q. Then the property in each separate zone was all assessed at a uniform rate in proportion to its assessed valuation? Is that correct?
A. Yes sir.
Q. That applies, now, to what kind of property?
A. That applies to the general farm lands and the town lots.
Q. Does it apply to railroad property?
A. Yes sir.
Q. I will ask you what property on the tax books in this improvement district was assessed at the lowest rate.
A. I guess it was the Kansas City Southern.
Q. I don't want any guess about it; if you know I want you to state it.

A. The books show that was, according to the records.
Q. The Kansas City Southern?
A. Yes sir.
Q. What was the rate on that, if you know?
A. Sixteen and a quarter per cent.
Q. And what about was the rate on the De Queen & Eastern Railroad property, if you know?
A. Thirty-one per cent, I think.
Q. What was the average rate on all the lands and town lots in the district?
A. That was fifty-four and a half per cent.
455 Q. You have made an assessment there of $21,270.00 against the property of the Kansas City Southern and the Texarkana & Fort Smith Railway Company?
A. Yes sir.
Q. State to the court whether or not in your opinion that is a just, fair and equitable assessment of their property in the district.
A. Yes sir.
Q. In your opinion will the property of these railroad companies situated within the district be increased and enhanced in value by reason of this improvement?
A. Yes sir, I think so.
Q. Give your reasons and opinion on that subject, Mr. Steel.
A. I would think it is because of the general improvement of the country as a whole for one thing, and the amount of increase in population naturally would create more tonnage for the road.
Q. Is it your opinion that the railroad property would sell, if offered on the market, for more than it would have without these improved roads?
A. I would think so.
Q. Due to what fact, Mr. Steel?
A. Well, due to more traffic and the upbuilding of the country in general.
Q. Would the respective returns and increase in traffic have any bearing on the value of the railroad?
A. I would think so.
Q. In other words, if the prospective business is considered better, would not that enhance to some extent the railroad property its value?
456 A. Yes, I would think so.
Q. You are reasonably familiar with the lands and town lots and other property embraced in the district, are you not?
A. Yes sir.
Q. Mr. McDonough interrogated Mr. Grady about some particular pieces——

Mr. McDonough: I object to that.
Court: That is improper.
Mr. Edwards: I will state to the court I want to interrogate him with reference to particular pieces of property, about which counsel asked the witness, W. C. Grady.

Court: All right, you can do that.

To the ruling of the court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Q. Take, for instance, the residence where Mr. Grady himself lives. Are you acquainted with that property?

A. Yes sir.

Q. How long have you known that property?

A. Well, practically all my life.

Q. How old is that residence?

A. From recollection I would think it was forty or forty-five years old; forty years old, I guess. I don't suppose I could recollect back much farther than that.

Q. You are now a resident of De Queen?

A. Yes sir.

Q. You formerly owned a residence in the town of Lockes-
457 burg, did you not?

A. Yes sir.

Q. State to the court the kind of property it was.

A. It had a frame building and barn; about an acre and a half in the ground.

Q. To whom did you sell that?

A. Sold it to Roy Hooper of Lockesburg.

Q. What is his wife's name?

A. Nona K. Hooper.

Q. What did you receive for that property when you sold it, Mr. Steel?

A. Fifteen hundred dollars.

Q. I ask you now to refer to your assessment record to that piece of property and state the assessed—I will read the description and ask you if that is it: Beginning and running north 133 yards, west 118 feet, north 118 feet, west 86 feet, south 164 yards, east 104 feet to point of beginning, containing two acres, or approximately two acres.

A. Yes sir.

Q. What was the assessed valuation at the time you made a record of that property?

A. $450.00.

Q. What are the benefits you extended against it?

A. Six hundred dollars.

Q. When did you sell that property, Mr. Steel?

A. In 1919, I believe.

Q. When did you make this assessment record?

A. In 1919.

458 Questions by Mr. McDonough:

Q. You sold it in 1919?

A. Yes sir, in the spring of 1919, in April, I believe.

Q. What did you get for it?

A. Fifteen hundred dollars.

Direct examination resumed:

Q. Do you know of any other residence property that sold in that locality in 1919?
A. No sir, I don't remember of any.

Cross-examination.

By Mr. McDonough:

Q. How long have you lived at Lockesburg?
A. Oh, I suppose thirty years out of my life.
Q. Are you related to Judge Steel?
A. Slightly.
Q. I don't mean any reflection on you?
A. I am a nephew of Judge Steel's.
Q. You are a brother of Will Steel?
A. Yes sir.
Q. You are a member of the board of assessors, are you?
A. Yes sir.
Q. Were you a member of the board from the beginning, when they began the work?
A. Yes sir.
Q. Where did you hold your meetings?
A. We did the work up here; most of it.
459 Q. At De Queen?
A. Yes sir.
Q. In what office here at De Queen?
A. We used this office up here part of the time and Professor Quinn's office part of the time.
Q. You mean the court room part of the time?
A. Yes sir.
Q. What other place?
A. Professor Quinn's office now; it is across the hall from the County Clerk's office.
Q. How much time did you put on the work?
A. I suppose about thirty days.
Q. Do you know many acres are in the district?
A. No sir, I never figured it up.
Q. Did you go over the district, yourself, personally farm by farm and examine it any?
A. No sir.
Q. Have you been engaged in railroading in any way?
A. No sir.
Q. Had anything to do with the operation of railroads?
A. No sir.
Q. Or made any study of railroad values?
A. No sir.
Q. Or the means that railroads have of earning a return on their property?
A. No sir.

Q. In making the assessment of $21,270 against the property of these railroads, you based it upon a belief that there would
460 be a general development of the country by reason of the construction of this highway?

A. Yes sir.

Q. In what way, in your opinion, can a railroad obtain any benefit from the construction of this highway?

A. Well, by an increase in population and also an increase of lands being put in cultivation it will produce more stuff for shipment.

Q. In other words, it will require an increase of traffic?

A. Yes sir.

Q. There is no other way that the railroad can gain anything except by an increase of traffic?

A. No sir, I think not.

Q. It has nothing to sell but traffic, has it?

A. That is all.

Q. It sells transportation?

A. Yes sir.

Q. Then, in order for it to get a benefit, it must have an increase in traffic enough to give it a benefit you have assessed against it? Is that right?

A. I suppose so.

Q. In other words, if you should assess a benefit, as you have, of $21,270.00, and if, as a matter of fact, the railroad could never earn that by reason of the construction of this road, or could never receive it, or it never would come to the railroad by reason of the construction of the highway, then the railroad would not be benefited, would it?

A. No sir, it wouldn't if it never did come to it.

461 Q. Did you make any estimate of the amount of traffic that would have to be increased in order to get a net profit or increase of $21,270.00?

A. No sir, I did not.

Q. There are two miles of this road in that district, isn't there?

A. Yes sir.

Q. Main line?

A. That is what the tax books show.

Q. And some buildings and some sidetracks?

A. Yes sir.

Q. If you increased two miles to the extent of $21,270.00 wouldn't that mean an enormous traffic which must go over practically the entire road?

A. I don't know about that; we didn't assess the two miles that way; we took the buildings and sidetracks as a unit, you know.

Q. What do you mean by not assessing it in that way?

A. We didn't assess the benefits to the two miles of track; we assessed it to the buildings and sidetracks and main line and all.

Q. You assessed the main line at $2,500.00 a mile?

A. Yes sir.

Q. Then, in order for the main line to get the benefit of that,

it would have to get traffic that would increase it to the extent of that $2,500.00 for the main line, wouldn't it?

A. Yes sir.

Q. The main line is the only one that can take this traffic and distribute it either north or south, isn't it?

A. When it starts to rolling, yes sir.

462 Q. Then, if you assessed for buildings nine thousand dollars the main line has to earn that, doesn't it, or else it is not earned?

A. I don't know; I judge the sidetracks to be an asset of the other.

Q. It is only through the main line operation that the earnings are made?

A. Sure.

Q. You don't collect anything for putting anything on the sidetrack?

A. I don't know; it is owing to how long you let it stand there.

Q. If you put a carload of products in possession of the Kansas City Southern at De Queen which has come from Lockesburg and it is destined to Kansas City the two miles can only supply its proportionate part of the haul, isn't that true?

A. Yes sir.

Q. And the road outside of the two miles from De Queen to Kansas City will share its part of the haul, will it not?

A. I would think so.

Q. And that part which does share its haul will be entitled to the earning on that property, will it not?

A. I suppose so.

Q. Then, if you put $21,270.00 on the sidetracks, main line and buildings in this two miles benefit you tax the line from De Queen to Kansas City?

A. I don't know that we have.

Q. You has- it solely on the traffic earnings? If we had

463 only two miles we couldn't earn anything, could we?

A. Certainly not, but then we are supposed to use the tax assessed valuation.

Q. These are special taxes; the County and State taxes are general taxes. Did you follow it because the County and State taxes were that way?

A. We took the county and State tax as the valuation assessed.

Q. The sole foundation of it was that the traffic would be increased was that the property would earn $21,270.00 more than it would without the highway?

A. Yes sir.

Q. Then, isn't that taxing the entire line from De Queen to Kansas City?

Mr. Edwards: That is objected to as calling for a conclusion.

Court: That is a conclusion. That is a question of law.

Mr. McDonough: Save an exception to the court's ruling.

To the ruling of the court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

Redirect examination:

Q. What experience have you had in assessing, valuing and equalizing values on the property of Sevier County prior to your appointment here as an assessor in this improvement district?

A. None especially, but I was on the Equalization Board here one time, I believe. It has been several years ago.

Q. How many years have you served on the Equalization Board?

464 A. I only served one term of about three weeks.

Q. Equalizing the value of the property in the county?

A. Yes sir.

Witness excused.

At this point the defendant rested.

465 J. R. SMITH, called by the plaintiff for rebuttal purposes, being duly sworn, testified as follows:

Direct examination.

By Mr. McDonough:

Q. Were you familiar with the condition of the road between De Queen and Lockesburg prior to the construction of Road Number 3?

A. Yes sir.

Q. Was that road in generally a fairly passable condition?

A. It was called an average county road.

Q. Mr. Smith, were fruit and vegetables grown and marketed from Horatio and De Queen before there were any hard-surfaced roads constructed in this part of the country?

A. Yes, cantaloupes and strawberries were grown to some extent around Horatio.

Q. At the season of the year when those products are marketed were the roads generally in such condition that the growers could reach the market with their strawberries and cantaloupes?

A. Yes sir.

Q. In your opinion is the growing of that class of commodities principally dependent on market conditions or the development of roads?

Mr. Edwards: Objected to as calling for a conclusion.

Court: That calls for a conclusion unless he qualifies as an expert on that business.

Mr. McDonough: I think it is admissible. He has already
466 shown his familiarity with the conditions.

Court: Go ahead and let him answer it if he knows.

Q. Go ahead and answer the question.

A. Well, of course that is rather a hard question to answer. I would think the market would have really as much to do with the growing as the hard roads.

Q. In the event of there being increased production of farm products in the territory contributory to Lockesburg would those commodities be loaded on the cars at Lockesburg?

Mr. Edwards: Objected to as not showing he is competent.
Court: Go ahead.
Mr. Edwards: Save exceptions.

A. I would think so.

Questions by the Court:

Q. Is fruit something that should be handled with care or can you just handle that fruit on any kind of roads?
A. It will have to be handled with care.
Q. Then, you say, the condition of the road will have very little to do with the profit of raising that kind of produce?
A. Unless you haul it a long distance.
Q. Don't you think surfaced roads would add some profit to the raising of fruit of that kind?
A. Yes sir.

Witness excused.
This was all the evidence offered on the part of the plaintiff.
This was all the evidence offered on the part of the Defendant.
This was all the evidence offered by either the plaintiff or the defendant.
467 This was all the evidence offered on the whole case.
At this point both sides rested.

Findings of the Court.

The Court, after hearing all the evidence, made the following findings:

The only question I think before the Court is whether or not this assessment is arbitrary and confiscatory. The assessment made by the Legislature is final, so far as I am concerned, along that line. There is quite a lot of conflict in the testimony on the question of benefits to the railroad. The witnesses for the railroad have gone very far in their statement that it would not benefit them any at all; and the testimony of the other witnesses, on the other hand, as shown to my mind, is that there is considerable benefit. One witness stated that there had been an increase of a hundred carloads of stuff in one season by virtue of this road; he said some of those run from $200.00 to a thousand dollars a car. A hundred carloads of stuff being brought to the railroad, ranging from two hundred dollars to a thousand dollars a carload, it seems to me, controverts very strongly the testimony on the part of the railroad company that they are getting nothing. It seems to me the railroad company makes its

money by the tonnage it hauls. I suppose it costs more to take twenty cars than it does ten cars, or costs more to haul fifty cars than it does twenty-five cars; but the fact of an increase in traffic amounting to a hundred carloads in a year, does it seems to me like, overcome the idea that there is no benefit at all. However, those men were very honest and conscientious in their idea. It seems to me like if every two miles of this railroad from her- to Kansas City would be increased a hundred carloads a year, it would be
468 worth something to the railroad; while, according to their statement, it would not be worth anything. Your testimony is that any tax would be confiscatory; any tax would be wrong, because you get no benefits whatever. On the other hand they claim they have assessed your property in proportion to value less than any other in the district. The only fault to be found is they have assessed other property at a greater value in proportion than they have your property. They have made an average assessment of other taxable property at 54 per cent; they have taxed yours at sixteen and a fourth per cent. They have taxed the De Queen & Eastern over here thirty-one and a half per cent, I believe that was; they have taxed you right at half of that. They have assessed the Western Union Telegraph Company at 60 per cent. Of course the Western Union Company might get a benefit from that according to the increase in population of the community, but they have assessed the pipe line at 50 per cent and I can't see any benefit there. If this was a suit by the pipe line they might say, "We are not benefited by this road." The oil in the pipe, I presume, is going somewhere else to be refined and there is no evidence that there is any benefit accruing to the pipe line by reason of this at all. When you come to say whether or not it is confiscatory, whether or not they have discriminated against you in this assessment, I can't see it. They have put your line at $3,500; they have put the side tracks in and assessed them, and I can't see where it is in excess of where they have assessed other property of like value and like improvement. As I stated this morning, the land-owner who raises a crop can be permitted by reason of the good road to market that crop, but the road doesn't make it grow
469 one blade of grass more but it enables a man to put something he grows on the market. The land doesn't receive any benefit, but the personal property does receive a benefit, and the railroad, by increased tonnage, receives a benefit. As Mr. Park stated, this is not cotton land over there, but it is a truck-growing country, and converting it from a cotton country that they can haul over any kind of roads to a truck country that requires improved roads. By changing those conditions it makes land anyway produce a better yield. In doing that it furnishes the railroad an increased tonnage in one year of a hundred cars of fruit that runs from two hundred dollars to a thousand dollars a car. If that is the case, it does seem to me like, the testimony is conclusive that the railroad has found some benefit. So I will find in favor of the assessors.

Mr. McDonough: Note our exceptions.
Court: Sure.

To the finding of the Court the plaintiff at the time excepted, and asked that its exceptions be noted of record, which is accordingly done.

All the proceedings in the case.

Reporter's Certificate.

I, Allen Watkins, Official Court Stenographer of the 9th Judicial Circuit of Arkansas, do hereby certify that the above and foregoing pages numbered from 1 to 241 inclusive contain a true and correct transcription of my shorthand notes taken at the trial of the within cause, said notes so taken being a true and correct report of all the proceedings had at said cause to the best of my knowledge and ability. Allen Watkins, Official Reporter.

470 The above and foregoing transcribed notes of the evidence, being all of the evidence, also contains all of the proceedings in said cause, and all offers to introduce testimony, and all rulings of the court in admitting testimony, and in excluding testimony. and the exceptions of the parties to all rulings of the court.

At the conclusion of said testimony, and after argument of the cause, by counsel on either side, the court found the issues for the Road Improvement District, and entered an order which is shown in the record, confirming the assessments against the property of The Texarkana & Fort Smith Railway Company and The Kansas City Southern Railway Company, as fixed by the assessors of said Road Improvement District.

The Kansas City Southern Railway Company and The Texarkana & Ft. Smith Railway Company saved due exceptions to each finding of fact by the court, and to each ruling of law made by the court, and excepted to the action of the court in refusing to set aside said assessments in whole or in part, and excepted to the action of the court in confirming said assessments made by said assessors.

Thereupon, and within the time allowed by court, and by the law, and on the 19th day of November, 1921, and in open court, the Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company filed their motion for a new trial, which was by the court overruled, and said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company duly excepted to the action of the court in overruling said motion for new trial, and prayed an appeal to the Supreme Court of the State of Arkansas, which was granted. The Kansas
471 City Southern Railway Company and The Texarkana & Fort Smith Railway Company prayed the court to be allowed ninety (90) days from and after the overruling of the motion for a new trial in which to prepare, have signed and to file their bill of exceptions.

Order Settling Bill of Exceptions.

Now come The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, and present to the court

this, their bill of exceptions, within the time allowed by the law, and before the adjournment of the Circuit Court of Sevier County, for the January Term, 1922, and the undersigned, being the Judge of the Court that tried said cause, finds that the above and foregoing constitutes a true and correct bill of exceptions, and the same is therefore approved, signed and made a part of the record herein. (Signed) James S. Steel, Judge of the Ninth Judicial Circuit of Arkansas.

472 In the Sevier Circuit Court.

[Title omitted.]

Stipulation as to Bill of Exceptions.

The undersigned as attorneys of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, and the Board of Improvement of Road Improvement District No. 3, and of Road Improvement District No. 3, and the Commissioners thereof, do hereby stipulate and agree that the above and foregoing is a true and correct bill of exceptions, showing all of the proceedings had in the trial of said cause on the 18th and 19th days of November, 1921. We hereby certify to the correctness of said bill of exceptions, and agree that the same may be filed by the Clerk, and made a part of the record herein, as provided by law. James B. McDonough, Attorney for the Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company. —— ——, Attorneys for Board of Improvement, Road Improvement District No. 3, and for Road Improvement District No. 3, and the Commissioners Thereof.

473 [File endorsement omitted.]

474 **Clerk's Certificate.**

STATE OF ARKANSAS,
County of Sevier, ss:

I, W. H. Wardlaw, Clerk of the Circuit Court, in and for the County and State aforesaid, do certify that the foregoing pages of typewriting contains a true and complete transcript of the record and proceedings in the Circuit Court of said County in the cause therein stated.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, on this the 30th day of January, 1922. W. H. Wardlaw, Clerk. (Seal.)

475 In the Sevier Circuit Court.

[Title omitted.]

Fee Bill.

To W. H. Wardlaw, Clerk.

Clerk's Fees 9.80

To Wm. B. Wallace, Sheriff.

Sheriff's fees..... 11.70

July, 1920:

W. C. Grady, 1 day..... 1.50

Nov. 18, 1921:

J. R. Smith, 2 days..... 3.00
Jacob Brown, 2 days..... 3.00

476 [File endorsement omitted.]

In the Supreme Court of Arkansas.

[Title omitted.]

Petition for and Order Allowing Appeal.

Come the appellants, The Kansas City Southern Railway Company and The Texarkana & Ft. Smith Railway Company, and pray an appeal to this Court in the above entitled cause, and allege as errors, the assignments set forth in the motion for new trial. Said appellants pray that the judgment herein be reversed and the cause be remanded. James B. McDonough, Attorney for Appellants.

Appeal granted April 28, 1922. W. P. Sadler, Clerk, By J. H. Campbell, D. C.

477 In the Supreme Court of Arkansas, Dec. 4, 1922.

[Title omitted.]

No. 18.

Opinion.

McCULLOCH, *C. J.*:

This is an appeal from the assessment of benefits of railroad property in a road improvement district formed under the general statutes of the State. Crawford & Moses Digest, Sec. 5399 et seq. Assessors

were appointed and the list of assessed benefits was filed with the county court in accordance with the terms of the statute. Appellants appeared there and resisted the assessment on the ground that no benefits would accrue to the railroad property from the construction of the improvement. There was an appeal to the circuit court and a trial there de novo.

The property of appellants which is assessed is in the City of De Queen, in Sevier County, and the road to be improved runs east and west from De Queen to the boundary of the county. The railroad runs north and south, and the road to be improved runs east at right angles to the railroad.

The assessed property of appellants consists of two miles of main line of the railroad, which was assessed for general taxation purposes at $54,000, and the benefits were assessed at the sum of $7,000, or $3,500 per mile; also of nine and three-fourths miles of side-
478 tracks, assessed for general taxation purposes at $29,250, and the benefits were assessed at $5,000; also depot buildings and other buildings, assessed for general taxation at $46,365, the benefits being assessed at $9,270, the total assessment being $21,270.

The district is shown to be about six miles wide, and the board of assessors and commissioners adopted what is termed the zone system, except as to railroad property, which was assessed at the actual benefits, according to the judgment of the assessors.

After the assessment list was filed with the county court, the General Assembly enacted a statute, approved February 7, 1920, at the extraordinary session, amending the statute in some particulars and expressly approving and confirming the assessments on file.

The contention of appellants is that the assessment of railroad property is arbitrary and unreasonable and that no benefits at all will accrue to that property from the construction of the improvement.

It is settled by our former decisions that on appeal from a trial at law concerning the correctness of assessments of benefits and as to the amount of benefits to accrue, the only question for our determination is whether the evidence is legally sufficient to sustain the find-
479 ings of the trial court. St. L. S. F. Ry. Co. v. Fort Smith & Van Buren Bridge District, 113 Ark. 493; C. R. I. & P. Ry. Co. v. Road Improvement District No. 1 of Prairie County, 137 Ark. 587. There have been many other later decisions of this court to the same effect.

An affirmance of the judgment in this case might be rested entirely on the confirmation of the assessments by the statute cited above. There is no reason shown why the statute is not applicable, for we have decided that even during the pendency of litigation a statute may be enacted ratifying and confirming assessments. Sudbury v. Graves, 83 Ark. 344; Tims v. Mack, 147 Ark. 112; Gibson v. Spikes, 143 Ark. 270; Burr v. Drainage District, 145 Ark. 55; Payne v. Road District, 149 Ark. 491.

This statute constituted a legislative determination of the correctness of the assessments, and that decision will not be overturned unless found to be obviously and demonstrably erroneous. See cases supra.

In addition to this, it may be said that there is abundant evidence in this case to sustain the finding of the trial court. Many witnesses were introduced, including the assessors themselves, and there is a conflict in the testimony as to whether or not there will be real and substantial benefit accruing to the railroad property. The testimony introduced on behalf of the district is that there will be great benefit accruing to the railroad property from the construction of the improvement, as the improved road will be a feeder to the rail-
480 road and will considerably enhance its business by the development of the contiguous and outlying territory. It is not a case of a parallel road, but of one which runs out into territory which will afford access to the railroad property and augment its business. We have decided that "in assessing the benefits to a railroad from building a hard-surfaced road, the Legislature may consider the benefit resulting from development of the territory." Hines v. Road Improvement District, 145 Ark. 382. The Supreme Court of the United States, in Branson v. Bush, 251 U. S. 182, made the same declaration. It was said in that case that it is obvious that "anything that develops the territory which the railroad serves must necessarily be a benefit to it, and that no agency for such development equals that of good roads.

As before stated, we are not called on to determine where the preponderance of the evidence lies, and we have no difficulty in reaching the conclusion that there is testimony of a very substantial nature which supports the finding of the trial court. It is unnecessary to discuss the evidence in detail or to call attention to the various circumstances which tend to support the theory that the railroad property will be substantially benefited, and that the appraisal of benefits is not excessive.

The judgment is, therefore, affirmed.

481 STATE OF ARKANSAS, *ss:*

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House in the City of Little Rock, on the 22nd day, being the fourth Monday of May, A. D. 1922, amongst others, were the following proceedings, on the 13th day of November, A. D. 1922, a day of said term:

[Title omitted.]

Order Setting Cause for Argument.

This cause, heretofore noted for oral argument, is now by the Court set down for such argument on November 27th inst.

November Term, 1922.

[Caption omitted.]

Argument and Submission.

November 27, 1922.

This cause being regularly called, come the parties thereto by their attorneys, and said cause is submitted upon the transcript of the record and the briefs filed and upon oral argument, and is by the Court taken under advisement.

482 In Supreme Court of Arkansas, November Term, 1922.

[Caption omitted.]

Judgment.

December 4, 1922.

This cause came on to be heard upon the transcript of the record of the circuit court of Sevier county, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the Court that the judgment of said circuit court in this cause rendered be, and the same is hereby in all things, affirmed with costs.

It is further considered that said appellees recover of said appellants all their costs in this Court in this cause expended and have execution thereof.

483 In Supreme Court of Arkansas, November Term, 1922.

[Caption omitted.]

Order Extending Time.

December 18, 1922.

The appellant having filed a petition for rehearing within the time allowed by law, now prays for time in which to file a supporting brief; and said appellant is allowed two weeks from date in which to file such brief.

November Term, 1922.

[Caption omitted.]

January 8, 1923.

Petition for rehearing having been filed within the time allowed by law in this cause, and the same having been duly served, the same

is now submitted with the briefs and response filed, and is by the Court taken under advisement.

484 In Supreme Court of Arkansas, November Term, 1922.

[Caption omitted.]

Order Overruling Petition for Rehearing.

January 22, 1923.

Being fully advised, the petition for rehearing heretofore filed in this cause, is by the Court overruled.

485 In the Supreme Court of Arkansas.

[Title omitted.]

Petition for Rehearing.

[Filed Dec. 16, 1922.]

Come the appellants, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, and petition the court for a rehearing in this cause, upon the following grounds:

1.

In the opinion handed down, the court has erroneously held that the assessments are valid.

2.

The court has erroneously held that the contention of the appellants is that the assessment of railroad property is arbitrary, and unreasonable, and that no benefits at all will accrue to that property from the construction of the improvement; the error in that being that appellants' contention is based on each of said grounds, and not on one alone. In other words, the appellants contend that the assessments are unreasonable, unjust, invalid, arbitrary and wrongful, because said assessments are not based upon an increase in the value of the property, and therefore said assessments take
486 the property of the appellants in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

3.

The court erred in holding that the evidence in this case is legally sufficient to sustain the findings of the court below.

4.

The court erred in not reversing and remanding the cause.

5.

The court erred in refusing to hold that an assessment of $21,270.00 per mile is confiscatory, arbitrary, and deprives appellants of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6.

The court erred in holding that the evidence was sufficient to show that appellants' property was increased in value in any sum whatever.

7.

The court erred in holding that the Act of the General Assembly of Arkansas approved February 7, 1920, was a legal legislative determination of the correctness of said assessments; the said Act having been passed after the issues were made up in this case, and being absolutely void, because it was the exercise of a judicial power, and said act thereby deprives these appellants of their property
487 without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

8.

The court erred in holding that there was any testimony of a substantial nature to support the findings of the District Court, and in not reversing said cause for all of the reasons set forth in the motion for new trial, which was filed in the Circuit Court, and appears in the record in this cause, at pages 28 to 37 thereof, which motion for new trial is made a part of this petition for rehearing, as though set out in full herein; the appellants relying on all the errors set forth in said motion for new trial.

9.

The court erred in refusing to set aside the assessments against the property of the appellants on the ground that the same were confiscatory, illegal and void, and deprived the appellants of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

10

The court erred in refusing to hold that said assessments were an unlawful burden upon Interstate Commerce.

11.

The court erred in refusing to hold that said assessments were levied upon the property of the appellants which is located
488 outside of the said improvement District.

Premises considered, the appellants pray that this petition for rehearing be granted, and that the cause be reversed and remanded. The Kansas City Southern Railway Company, The Texarkana & Fort Smith Railway Company, By James B. McDonough, Their Attorney.

Certificate.

I, James B. McDonough, hereby certify that I am counsel for the appellants, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, and I further certify that I have carefully studied and re-read the transcript in this cause since the opinion of the court was handed down herein, on December 4, 1922, and I further certify that, having carefully studied the court's opinion and the transcript, it is my opinion that the court has erred in the particulars set forth in the above and foregoing petition for rehearing, and I respectfully submit that, for the reasons given in the said petition for rehearing, said petition should be granted, in my opinion. James B. McDonough, Attorney for Appellants.

[File endorsement omitted.]

489 **Clerk's Certificate.**

STATE OF ARKANSAS, *ss:*

Supreme Court.

I, W. P. Sadler, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, Appellants, vs. Road Improvement District No. 3 of Sevier County, Arkansas, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Ark., this March —, 1923. W. P. Sadler, Clerk Supreme Court of Arkansas. [Seal of Supreme Court of Arkansas.]

490 In the Supreme Court of the State of Arkansas and in the Supreme Court of the United States.

[Title omitted.]

Assignments of Error.

Come now the plaintiffs in error, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, and file herewith their petition for writ of error, and also this assign-

ment of error, and allege and say that there are errors in the record and proceedings in the above entitled cause tried and recently determined in the Supreme Court of Arkansas, which is numbered 7392 in said Supreme Court of the State of Arkansas, and in which a final judgment was entered on the 4th day of December, 1922, and for the purpose of having this cause reviewed and the errors corrected in the Supreme Court off the United States and the said cause reversed, the said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company make the following assignments of error:

1.

Upon the undisputed evidence in the proceedings herein there is no testimony to show that the property of the petitioners will be benefited by the highway contemplated, and proposed to be built by Road Improvement District No. 3 of Sevier County, Arkansas.

491

II.

In making the assessments against the property of the petitioners, the assessors and commissioners included in the valuation of the property of the petitioners the tangible and the intangible property of the petitioners, and included in said value a part of the personal property of the petitioners, and at the same time assessed benefits against the farms and lands in said improvement district without assessing any of the personal property on said farms, and assessed in said district no personal property, except that which belonged to the peti-oners.

III.

In making said assessment of benefits the assessors and commissioners included property and property rights of the petitioners which is not located within said road district, and included the business and good will of the petitioners, and in part some of its property outside of said district, and thereby levied assessments upon property of petitioners not in the district, and thereby deprived the petitioners of their property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

IV.

In making the assessments against the property of the petitioners, the assessors and commissioners took into consideration the use of the property of the petitioners and did not take into consideration the use of the property *of* the other real property located in said district.

V.

In making said assessments against the property of the petitioners, the said assessors and commissioners extended the line of said im-

provement district for the purpose of including in said district, the two miles of the right of way and property of petitioners, and extended said district only far enough to include said property of the petitioners, and purposely left out of said district more than
492 one-half of the real property located in the Town of De Queen, although all the property located in the Town of De Queen was benefited. This leaving out of the real property in De Queen, and not taxing the same was an unlawful and unconstitutional discrimination against the petitioners, and renders said assessments void.

VI.

The assessment against the property of the petitioners of Twenty-one Thousand Two Hundred and Seventh Dollars ($21,270.00) as a benefit is confiscatory, arbitrary, illegal and void, because it is impossible for the property of the petitioners to be enhanced in value to that extent. Such assessment therefore takes the property of the petitioners without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

VII.

The Supreme Court of Arkansas erred in holding that the Act of the General Assembly of the State of Arkansas approved February 7, 1920, was a legal legislative determination of the correctness of said assessments. The said Act was passed after the issues in this cause were made up, and is an unlawful attempt to exercise judicial power by the legislative department of the government, and is subject to all the constitutional objections made herein, as to said assessments, and the said Act, if enforced, will deprive these petitioners of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

VIII.

The Supreme Court of Arkansas erred in holding that there was any substantial evidence to support the findings of the Circuit Court, and of the County Court.

IX.

The assessors and commissioners, in making the said wrongful assessments against the property of the petitioners, based their action solely upon the contention by said assessors and commis-
493 sioners that the construction of the highway in question would result in the general up-building and general improvement of the surrounding country, and would thereby result in bringing increased traffic to the petitioners at some time in the future. It was contended by said assessors and commissioners that that probable and conjectural increased revenue would enhance the value of petitioners' property within the district, in a sum equal to the assess-

ments made against petitioners' property. The petitioners assert that the probable increased traffic is not a special and peculiar benefit, and an enhancement of value within the meaning of the law, and that such a construction of the Act No. 338 above referred to, deprives the petitioners of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

X.

The plan of assessing the main line *of* $3,500.00, and the side tracks separately and with an additional valuation is double taxation. The side tracks are in reality a part of the main line system. Under improvement district laws said side tracks have no separate existence or valuation. Therefore, to tax the main line, and then tax an additional sum on the side tracks is double taxation.

XI.

The main line valuation legally, and in effect includes the buildings. The assessors and commissioners assessed the buildings and sidetracks separately, and at the same time included said buildings and sidetracks in the main line valuation, thus resulting in double taxation, both as to the buildings and sidetracks, and necessarily therefore, creating double taxation on all the property of the petitioners.

XII.

The assessors and commissioners in assessing property other than railroad property, did not assess the improvements and the land separately. If the improvements on other real property were assessed at all, they were assessed as a part of the real property.
494 The side tracks and buildings of petitioners are a part of their real property, and if assessable at all, they are included in the real property. The assessors and commissioners, therefore, adopted a different plan, and in effect excluded the improvements on other real property, and included the side tracks and buildings on petitioners' property.

XIII.

There is no evidence in the record to show that the building of the proposed highway would enhance the value of any of the side tracks or buildings of the petitioners, and therefore there is no basis for assessing any benefits against such side tracks or buildings.

XIV.

The assessors and commissioners assessed the alleged benefits on farm lands and other real property at an undervaluation of said property, and assessed the alleged benefits against the property of the petitioners on an overvaluation, thus discriminating against the

petitioners, and depriving them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

XV.

The law under which the assessments in question have been made against the property of petitioner was intended to and does provide a ratio of taxes assessed against the property of your petitioners to benefits received by such property, if any, much higher than is the ratio of taxes assessed against the other property in the district to the benefits accruing to such other property.

XVI.

The theory upon which large benefits are assessed against the property of petitioners is based upon a pretended expectation of future earnings and distributed values having no foundation in fact, while other property in the district is assessed according to acres and position, and with a reasonable probability that such other property will receive substantial benefits.

495 The Supreme Court of the State of Arkansas erred in affirming said judgment and in refusing to hold that said assessments were unjust, and in refusing to set aside said assessments. The said assessments being a burden upon Interstate Commerce, and the said proceedings levying said assessments against the property of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, deprive said companies of their property without due process of law, contrary to the sections of the Constitution of the United States above referred to.

For each and every one of the errors above set forth, and for all of them, the appellants, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, pray that the said judgment of the Supreme Court of the State of Arkansas made final on the 22nd day of January, 1923, be reversed, and that this cause be remanded with directions, and that the appellants herein have all relief to which they are entitled in law. The Kansas City Southern Railway Company, The Texarkana & Fort Smith Railway Company, By James B. McDonough, Their Attorneys.

496 In the Supreme Court of the State of Arkansas and the Supreme Court of the United States.

[Title omitted.]

Petition for Writ of Error.

UNITED STATES OF AMERICA,
State of Arkansas:

To the honorable the Chief Justice of the Supreme Court of the State of Arkansas:

The petitioners and plaintiffs in error, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, respectfully show and allege that in the above entitled cause, the Supreme Court of the State of Arkansas on the 4th day of December, 1922, entered an order affirming the judgment of the Circuit Court of Sevier County, State of Arkansas, but said order and judgment of the Supreme Court of the State of Arkansas did not at that time become final because within the time allowed by the rules of said Supreme Court of the State of Arkansas, the petitioners herein filed in said Supreme Court of the State of Arkansas a petition for a rehearing. Said petition for rehearing came on for a hearing, and final decision on the 22nd day of January, 1923. On that day the Supreme Court of the State of Arkansas denied the petition of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, for a rehearing in this cause, and
497 on said 22nd day of January, 1923, rendered a final judgment against the petitioners, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company in said cause; thereby adjudging, holding and decreeing that the property of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company claimed to be located within the boundaries of said Road Improvement District No. 3 of Sevier County, State of Arkansas, was benefited in the sum of Thirty-five Hundred Dollars ($3,500.00) per mile, making a total of Seven Thousand Dollars ($7,000.00) on the two miles of main line within said road district, and that the side tracks, amounting to nine and three-fourths miles within said district were benefited in the sum of Five Thousand Dollars ($5,000.00), and that the depot buildings and other buildings were benefited in the sum of Nine Thousand, two Hundred and Seventy Dollars ($9,270.00), and making a total benefits adjudged and decreed by the Supreme Court of Arkansas in said cause against the petitioners herein, of Twenty-one Thousand Two Hundred and Seventy Dollars ($21,270.00) on that part of the railroad belonging to the petitioners within said district. The said Supreme Court of Arkansas therefore, upon the denial of the petition for rehearing, finally rendered judgment affirming the judgment of the Circuit Court of Sevier County, State of Arkansas,

which latter court affirmed the judgment of the County Court of Sevier County, State of Arkansas, adjudging and declaring that the property of the petitioners herein has been benefited in said sum of Twenty-one Thousand Two Hundred and Seventy Dollars ($21,270.00), as above set forth.

The said petitioners herein, and plaintiffs in error further allege that the Supreme Court of the State of Arkansas is the highest court of said State of Arkansas in which a decision could be had in said cause, and your petitioners claim the right to remove said cause and the judgment and decree therein for review and correction of errors to the Supreme Court of the United States by writ of error
498 under Section 237 of the Judicial Code of the United States, being Section 237 of the Act of Congress of March 3, 1911, and known as the Judicial Code of the United States, as amended in 1916, and thereafter, because under the claims and pleadings of the said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company set up in the County Court of Sevier County, State of Arkansas, and by proper appeal in Circuit Court of said Sevier County, State of Arkansas, and because of the issues joined in said cause in all of said courts, there were and are drawn in question in said cause certain rights, immunities and privileges of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company guaranteed to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, and because there is drawn in question in the decision of said cause by the Supreme Court of the State of Arkansas the validity of Act 338 of the General Assembly of the State of Arkansas found in the Acts of 1915 of the General Assembly of the State of Arkansas at page 1400, and there is also drawn in question in said judgment and decree of the Supreme Court of Arkansas and under the pleadings in this cause, the authority exercised by the Board of Improvement and the Commissioners of Road Improvement District No. 3 of Sevier County, Arkansas, on the ground that said judgment and decree is repugnant to Section One of the Fourteenth Amendment to the Constitution of the United States, and further because the said decree is repugnant to Section 8 of Article I of the Constitution of the United States, because said decree places an unlawful burden on Interstate Commerce, contrary to said Section 8 of Article I.

The petitioners further allege that said judgment and decree specifically draws in question the rights and immunities of the petitioners under Section 1 of the Fourteenth Amendment to the Constitution of the United States in that said judgment and decree deprives the petitioners of the equal protection of the laws, contrary to said Section, and deprives them of their property without due
499 process of law, contrary to said Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Your petitioners further state as will appear by reference to the proceedings in this cause, which proceedings are hereby referred to and made a part of this petition in error, that under the Act No. 338

of the General Assembly of the State of Arkansas of 1915, they appeared in the County Court in accordance with their rights under said Act, and in accordance with the terms of said Act, and in said County Court, contested the correctness and validity of the assessments made by the assessors and commissioners of said Road Improvement District No. 3 of Sevier County, State of Arkansas. In the plea and answer of your petitioners in said County Court of Sevier County, Arkansas, which plea was renewed in the Circuit Court of said County, your petitioners set up and relied upon their rights, immunities and privileges guaranteed to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and further asserted in said plea that said assessments attempted to be made by the assessors and commissioners of Road Improvement District No. 3 of Sevier County were an illegal exaction and an unlawful burden on Interstate Commerce, and further alleged that said assessments were confiscatory, arbitrary, discriminatory and illegal and void, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. The said County Court denied the plea and claims of the petitioners, and the petitioners appealed to the Circuit Court under the laws of Arkansas, and the Circuit Court, upon a hearing affirmed the judgment of the County Court of Sevier County, Arkansas. Thereupon, the petitioners appealed to the Supreme Court of Arkansas, and that court affirmed the judgment of the Circuit Court, as above set forth.

Your petitioners allege that the assessors and commissioners of Road Improvement District No. 3 of Sevier County, Arkansas, and the County Court of that County, and the Circuit Court, have no authority to make assessments against the property of the petitioners, except as provided in Section 11 of said Act No. 338 aboved referred to. Under the authority of that Section, the said commis-
500 sioners and the County Court and the Circuit Court and the Supreme Court of Arkansas were without authority to assess against the property of the petitioners within Road Improvement District No. 3, the sum of Twenty-one Thousand Two Hundred and Seventy Dollars ($21,270.00), and by such assessment, the said Road Improvement District, through its officials denied to the appellees their rights under the Constitution of the United States, as above set forth.

Your petitioners respectfully allege that the judgment and decree of the Supreme Court of Arkansas above referred to, which affirmed the judgment of the Circuit Court of Sevier County, which latter court confirmed the judgment of the County Court, denies to the petitioners the equal protection of the laws, and denies the petitioners of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, upon the following grounds, and for the following reasons, to-wit:

1. Upon the undisputed evidence in the proceedings herein there is no testimony to show that the property of the petitioners will be benefited by the highway contemplated, and proposed to be built by Road Improvement District No. 3 of Sevier County, Arkansas.

2. In making the assessments against the property of the petitioners, the assessors and commissioners included in the valuation of the property of the petitioners the tangible and the intangible property of the petitioners, and included in said value a part of the personal property of the petitioners, and at the same time assessed benefits against the farms and lands in said improvement district without assessing any of the personal property on said farms, and assessed in said district no personal property, except that which belonged to the petitioners.

3. In making said assessment of benefits the assessors and commissioners included property and property rights of the petitioners which are not located within said road district, and included the business and good will of the petitioners, and in part some of its
501 property outside of said district, and thereby levied assessments upon property of petitioners not in the district, and thereby deprived the petitioners of their property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

4. In making the assessments against the property of the petitioners, the assessors and commissioners took into consideration the use of the property of the petitioners and did not take into consideration the use of the other real property located in said district.

5. In making said assessments against the property of the petitioners, the said assessors and commissioners extended the line of said improvement district for the purpose of including in said district, the two miles of the right of way and property of petitioners, and extended said district only far enough to include said property of the petitioners, and purposely left out of said district more than one-half of the real property located in the town of De Queen, although all the property located in the town of De Queen was benefited. This leaving out of the real property in De Queen, and not taxing the same was an unlawful and unconstitutional discrimination against the petitioners, and renders said assessments illegal and void.

6. The assessment against the property of the petitioners of Twenty-one Thousand Two Hundred and Seventh Dollars ($21,270.00) as a benefit is confiscatory, arbitrary, illegal and void, because it is impossible for the property of the petitioners to be enhanced in value to that extent. Such assessment therefore takes the property of the petitioners without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

7. The Supreme Court of Arkansas erred in holding that the Act of the General Assembly of the State of Arkansas approved February 7, 1920, was a legal legislative determination of the correctness of said assessments. The said Act was passed after the issues
502 in this cause were made up, and is an unlawful attempt to exercise judicial power by the legislative department of the government, and is subject to all the constitutional objections made herein, as to said assessments, and the said Act, if enforced, will deprive these petitioners of their property without due process of law,

contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Arkansas erred in holding that there was any substantial evidence to support the findings of the Circuit Court, and of the County Court.

9. The assessors and commissioners, in making the said wrongful assessments against the property of the petitioners, based their action solely upon the contention by said assessors and commissioners that the construction of the highway in question would result in the general up-building and general improvement of the surrounding country, and would thereby result in bringing increased traffic to the petitioners at some time in the future. It was contended by said assessors and commissioners that that probable and conjectural increased revenue would enhance the value of petitioners' property within the district, in a sum equal to the assessments made against petitioners' property. The petitioners assert that the probable increased traffic is not a special and peculiar benefit, and an enhancement of value within the meaning of the law, and that such a construction of the Act No. 338 above referred to, deprives the petitioners of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

10. The plan of assessing the main line at $3,500.00, and the side tracks separately and with an additional valuation is double taxation. The side tracks are in reality a part of the main line system. Under improvement district laws said side tracks have no separate existence or valuation. Therefore, to tax the main line, and then tax an additional sum on the side tracks is double taxation.

11. The main line valuation legally, and in effect includes the buildings. The assessors and commissioners assessed the buildings and sidetracks separately, and at the same time included said
503 buildings and sidetracks in the main line valuation, thus resulting in double taxation, both as to the buildings and sidetracks, and necessarily therefore, creating double taxation on all the property of the petitioners.

12. The assessors and commissioners in assessing property other than railroad property, did not assess the improvements and the land separately. If the improvements on other real property were assessed at all, they were assessed as a part of the real property. The side tracks and buildings of petitioners are a part of their real property, and if assessable at all, they are included in the real property. The assessors and commissioners, therefore, adopted a different plan, and in effect excluded the improvements on other real property, and included the side tracks and buildings on petitioners' property.

13. There is no evidence in the record to show that the building of the proposed highway would enhance the value of any of the side tracks or buildings of the petitioners, and therefore there is no basis for assessing any benefits against such side tracks or buildings.

14. The assessors and commissioners assessed the alleged benefits on farm lands and other real property at an undervaluation of said property, and assessed the alleged benefits against the property of the

petitioners on an overvaluation, thus discriminating against the petitioners, and depriving them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

15. The law under which the assessments in question have been made against the property of petitioner was intended to and does provide a ratio of taxes assessed against the property of your petitioners to benefits received by such property, if any, much higher than is the ratio of taxes assessed against the other property in the district to the benefits accruing to such other property.

504 16. The theory upon which large benefits are assessed against the property of petitioners is based upon a pretended expectation of future earnings and distributed values having no foundation in fact, while other property in the district is assessed according to area and position, and with a reasonable probability that such other property will receive substantial benefits.

Your petitioners respectfully allege and show that the above grounds were alleged by them in the County Court of Sevier County, and that said grounds draw in question their rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States, and under Section 8 of Article I of said Constitution, said assessors and commissioners by denying the plea of your petitioners, thereby deprive your petitioners of their property, and also deny to your petitioners their rights, immunities and privileges granted to them under the Constitution of the United States, and deny your petitioners the equal protection of the law, as above set forth.

Your petitioners therefore respectfully represent and allege that the Supreme Court of the State of Arkansas, in affirming the decision of the Circuit Court of Sevier County, State of Arkansas, which had affirmed the decision of the County Court of that county, which latter court had affirmed the decision of the assessors and commissioners, in effect and actually deprive your petitioners of their property, and deny to your petitioners their rights, privileges and immunities under the Constitution of the United States, as above set forth, and said decision of the Supreme Court of Arkansas was therefore against the rights, privileges and immunities and protection guaranteed to your petitioners by said sections of the Constitution of the United States.

Your petitioners respectfully allege that all of the above matters are fully set forth in the proceedings which are made a part hereof, and a certified copy of the proceedings in said cause is hereto attached and made a part hereof.

505 Your petitioners therefore allege and claim that their property is not liable to the assessments of benefits as held in said decision of the Supreme Court of the State of Arkansas, and that said assessments of benefits should be set aside on the grounds and for the reasons set forth in the assignments of error, which *is* herewith filed and made a part of this petition for writ of error.

Your petitioners further allege that said Supreme Court of Arkansas held that said assessments were fair, just and correct, and that

there was sufficient testimony tending to uphold said assessments, and that said assessments were not discriminatory, arbitrary, illegal and void, and by thus holding said assessments valid, said decision denied to your petitioners their rights under the Constitution of the United States, as above set forth.

Your petitioners further allege that all of the above matters are fully set forth in said proceedings, and your petitioners herewith offer proper supersedeas bond, as required by law, and pray that said bond as approved, and that this writ of error be granted.

Wherefore, your petitioners pray the allowance of a writ of error returnable into the Supreme Court of the United States, as provided by law, and that a duly authenticated transcript of the proceedings be sent to the Supreme Court of the United States, and further for citation and supersedeas, and your petitioners will ever pray; and that upon a final hearing of this cause in the Supreme Court of the United States, the judgment and decision of the Supreme Court of the State of Arkansas be reversed, and that said cause be remanded, and that your petitioners have all other and further relief to which they may be entitled. The Kansas City Southern Railway Company, The Texarkana and Fort Smith Railway Company, by James B. McDonough, Their Attorney.

506 In the Supreme Court of Arkansas.

[Title omitted.]

Order Allowing Writ of Error.

[Filed March 5, 1923.]

March 5, 1923.

Let the writ of error herein issue upon the execution of a bond in the sum of fifteen thousand dollars which is to act as a supersedeas. E. A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas, Now and at the Time of the Rendition of said Judgment.

[File endorsement omitted.]

507 UNITED STATES OF AMERICA:

[Title omitted.]

Supersedeas Bond.

[Filed Mar. 5, 1923.]

Know all men by these presents:

That we, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, as principals, and American Surety Company, of New York, as surety, are held and

firmly bound unto Road Improvement District Number 3 of Sevier County, Arkansas et al., in the penal sum of Fifteen Thousand Dollars ($15,000.00) as hereinafter provided.

Sealed with our seals and dated this 2nd day of March, 1923.

The above bond is upon this condition, to-wit:

Whereas, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company have taken a writ of error from the judgment of the Supreme Court of the State of Arkansas, rendered at the present term of said court, and on the 22nd day of January, 1923, in favor of Road Improvement District Number 3 of Sevier County, Arkansas et al., adjudging and decreeing that the property of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company would be benefited by the construction of a highway in said Road Improvement District in the sum of Twenty-one Thousand, Two
508 Hundred and Seventy Dollars ($21,270.00); and,

Whereas, the Supreme Court of Arkansas on said 22nd day of January, 1923, made said judgment final by overruling a petition for rehearing on that day; and

Whereas, the Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company have prosecuted a writ of error and are prosecuting a writ of error for the purpose of taking said cause to the Supreme Court of the United States to reverse the judgment rendered by the Supreme Court of the State of Arkansas in the above entitled cause; and

Whereas, the Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company desire to supersede the said judgment:

Now, therefore, the above named principals and surety hereby covenant to and with the above named defendants in error, Road Improvement District Number 3 of Sevier County, et al. that the Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company will pay unto the said Road Improvement District Number 3 of Sevier County, et al., defendants in error, all costs and damages that may be adjudged against the said plaintiffs in error, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, and that the said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company will perform the judgment of the court rendered in the premises in said cause, and in the event of the failure of said plaintiffs in error to prosecute their said writ of error to a final judgment in the Supreme Court of the United
States, or if said writ of error shall for any cause be dis-
509 missed, or if on the hearing of said writ of error in the Supreme Court of the United States, the judgment of the Supreme Court of the State of Arkansas shall be affirmed, then if the said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company shall fully pay and perform the judgment of the court, and shall fully perform all the

orders and judgments of said Supreme Court of the United States, then this obligation shall be null and void; otherwise the same shall remain in full force and effect.

Witness our hands and seals this 2nd day of March 1923. The Kansas City Southern Railway Company, The Texarkana & Fort Smith Railway Company, By James B. McDonough, Their Attorney American Surety Company of New York, By Allen Kennedy, Resident Secty. & Atty. in Fac. Attest: —— ——.

Approval of Bond.

The above and foregoing bond is approved, this the 5 day of March, 1923. E. A. McCulloch, Chief Justice of Supreme Court of Arkansas, Now and at the Time of the Rendition of said Judgment.

[File endorsement omitted.]

510 UNITED STATES OF AMERICA:

In the Supreme Court of the State of Arkansas.

[Title omitted.]

Writ of Error.

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which said judgment is in the said cause before you, or some of you, being the highest court of law or equity of the said State of Arkansas, in which a decision could he had in said suit between The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, defendants, and Plaintiffs in Error herein, and Road Improvement District Number 3 of Sevier County, Arkansas, et al., plaintiffs below, and Defendants in Error herein, and numbered 7392 in said Supreme Court of Arkansas, wherein was drawn in question the construction of certain Sections of the Constitution of the United States, and the plaintiffs in error contended that under Section 1 of the 14th Amendment to the Constitution of the United States, and under Section 5 of said Amendment, the plaintiffs in error, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company.

511 were denied the equal protection of the laws, and were denied certain rights, privileges and immunities, especially set up and claimed under said Sections of the Constitution of the United States, manifest error hath happened to the great damage of the said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, plaintiffs in error

herein, as by their prayer for appeal and complainant duly appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington City on the 6th day of April, 1923, next, in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, said Supreme Court may cause further to be done therein, to correct that error, if any, and do what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this 7th day of March, 1923. Sid B. Redding, Clerk of the District Court of the United States for the Western District of Arkansas, Fort Smith Division, By W. P. Feild, Deputy Clerk. [Seal of the District Court, West. Dist.. Ark., Western Division, U. S. A.]

512 **Certificate of Lodgment.**

STATE OF ARKANSAS, *ss:*

Supreme Court.

I, W. P. Sadler, Clerk of the said court, do hereby certify that there was lodged with me as such clerk on March 7, 1923, in the matter of The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, versus Road Improvement District No. 3 of Sevier County, Arkansas,

1. The original bond of which a copy is herein set forth.

2. *The* copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this March 26, 1923. W. P. Sadler, Clerk Supreme Court of Arkansas. [Seal of the Supreme Court of Arkansas.]

513 In the Supreme Court of the United States.

[Title omitted.]

Citation and Service.

To Road Improvement District Number 3 of Sevier County, Arkansas, et al.:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court

of the State of Arkansas, wherein The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company are plaintiffs in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against Plaintiffs in Error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edgar A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas, this 5 day of Mch., 1923. E. A. McCulloch, Chief Justice of the Supreme Court of Arkansas, Now and at the Time of the Rendition of said Judgment. Attest: W. P. Sadler, Clerk, By —— ——, Deputy Clerk.

514 **Acceptance of Service of Citation.**

The Defendants in Error, Road Improvement District Number 3 of Sevier County, Arkansas, et al., hereby accept service of the above citation, and acknowledge the receipt of a copy of the same, this 21 day of Mch., 1923. Road Improvement District Number 3 of Sevier County, Arkansas, et al., By Hal L. Norwood, Attorney for Defendants in Error.

515 **Return to Writ.**

UNITED STATES OF AMERICA, *ss:*

Supreme Court of Arkansas.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this March 26, 1923. W. P. Sadler, Clerk Supreme Court of Arkansas. [Seal of the Supreme Court of Arkansas.]

Bill for Costs of Suit.

Advance Cost	$11.50
Transcript to this Court	93.00
Appellees' Briefs (District)	15.00
Transcript to U. S. Supreme Court	161.80
	$281.30

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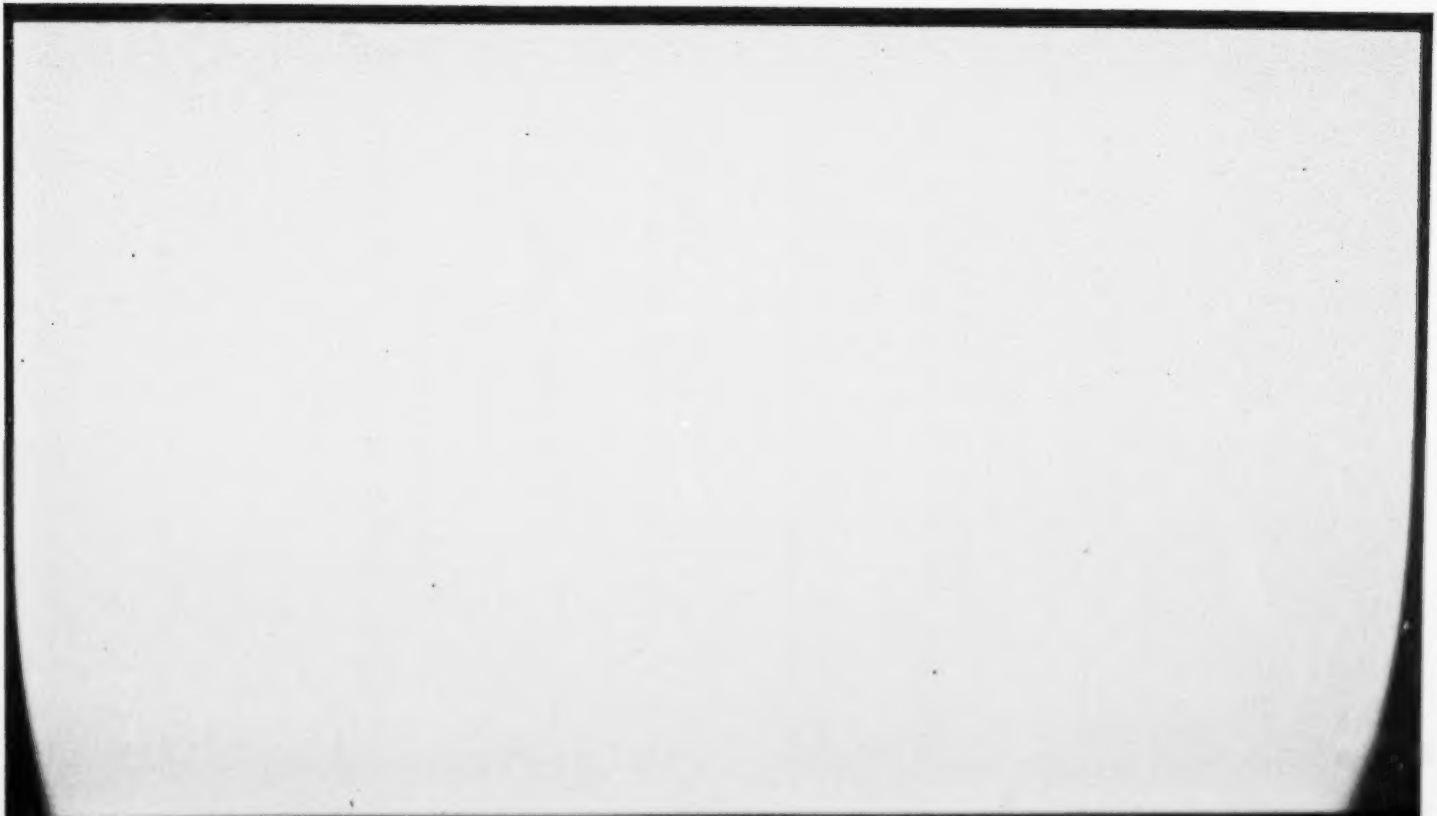

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 933

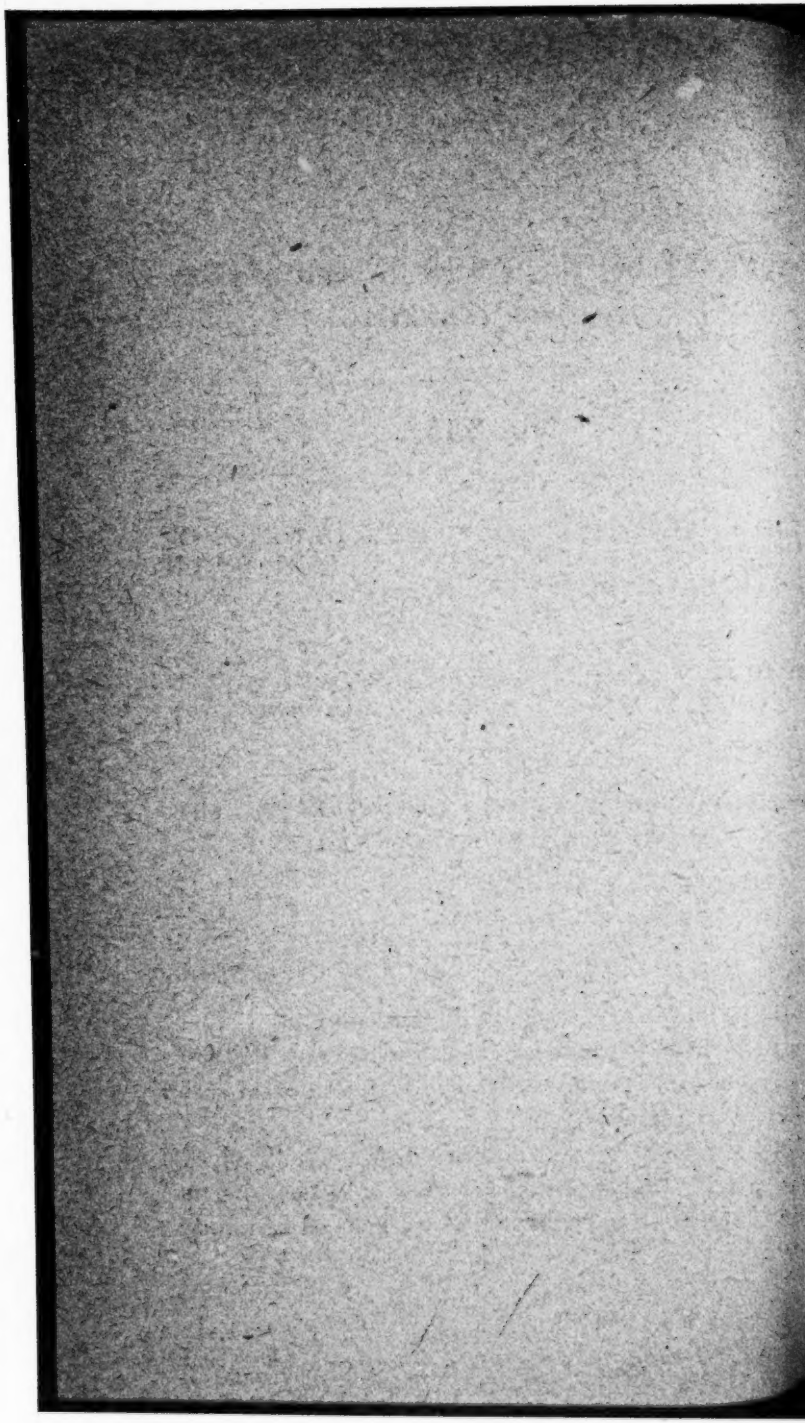
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND THE TEXARKANA & FORT SMITH RAILWAY COMPANY, PETITIONERS,

vs.

ROAD IMPROVEMENT DISTRICT NO. 3 OF SEVIER COUNTY, ARKANSAS, ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

JAMES B. McDONOUGH,
Attorney for Petitioners.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 955.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND THE TEXARKANA & FORT SMITH RAILWAY COMPANY, PETITIONERS,

vs.

ROAD IMPROVEMENT DISTRICT NO. 3 OF SEVIER COUNTY, ARKANSAS, ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

To the Honorable the Supreme Court of the United States:

The petitioners, The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, corporations, and hereinafter referred to as petitioners, show to this court as follows:

The petitioners own and operate a line of railroad extending from Kansas City, in the State of Missouri, to the Gulf of Mexico and Port Arthur, in the State of Texas, said

line being approximately eight hundred miles in length and running through the States of Missouri, Kansas, Arkansas, Oklahoma, Louisiana, and Texas. Said petitioners are engaged in interstate commerce. Petitioners' line of railroad passes through Sevier County, State of Arkansas, and through Road Improvement District Number 3 of said Sevier County, State of Arkansas.

The Board of Improvement of said Road Improvement District and said district and the officers thereof are attempting to impose a local assessment against two miles of the railroad of the petitioners. The assessment is a so-called local assessment of alleged benefits. The total benefit assessment named was divided between the main line, buildings, and side tracks. Against the maine line the assessment was $3,500.00 per mile, or a total of $7,000.00. Against the side tracks, the assessment was $5,000.00, and against the buildings, $9,270.00. The side tracks and buildings were located on the right of way, and all the buildings, side tracks, and main line were used exclusively for railroad purposes.

The Board of Improvement of Road Improvement District Number 3 of Sevier County and the district itself, as a body politic and corporate, and the Commissioners thereof are the respondents. For convenience the said parties will be referred to as respondents.

The Road Improvement District was organized under Act 338 of the acts of the General Assembly of Arkansas of 1915. See acts of 1915, page 1400. As originally laid out, the Road Improvement District did not include the property of the petitioners. Later the boundaries of said district were extended so as to include said property of petitioners. In

extending the boundaries the district was so laid out as to include one-third to one-half of the town of De Queen, the county seat of Sevier County, Arkansas, although it was admitted by the respondents and their counsel that the entire town of De Queen would be benefited by the construction of the road. The district was a narrow district, being two miles wide at De Queen, and extending east and southeast a distance of eighteen or twenty miles to the eastern boundary of Sevier County. The width of the district ranged from two miles to probably eight or nine miles. The farm lands in the district have benefits assessed against them ranging from $2.00 per acre to an average of $10.00 and $12.00 an acre. It is contended by the petitioners that the farm lands were systematically undervalued, and that the petitioners' property was overvalued. The total acreage in the district was about 64,000 acres. The petitioners have in the district twenty-four acres of right of way. The total assessed benefits in the district on all the property amounted to $510,033.00. The total value on acreage and town lots amounted to $897,660.00. The total value on petitioners' property was $129,615.00. The total assessments on the farm lands averages about $9.00 per acre. The total assessment on the petitioners' property amounts to $880.00 per acre. The result of the action of the assessors, which was confirmed by the County Court, by the Circuit Court, and by the Supreme Court of the State, is to place an assessment against the property of petitioners of $10,635.00 per mile. The only basis for the assessments under the decisions in Arkansas, as well as under the decisions of this court, is that property of the petitioners will be enhanced in value in a sum equal to the assessments of benefits which are placed on the property.

Under the Alexander Law, heretofore cited, only property located within the District can be assessed for these local taxes. The total assessment of $21,270.00 was assessed upon the theory that the two miles, which property included the buildings and the sidetracks and the main line of petitioners, would be enhanced in value in said sum of $21,270.00. The undisputed evidence of the assessors and the commissioners showed that the only benefit which the petitioners' property could derive from the construction of the highway was increased traffic. It was not attempted to show that there was any other basis for an enhancement in the value of the petitioners' property other than the conjectural, probable increase in the traffic or tonnage of the petitioners, due to the development of the country through which the road was to pass. From De Queen, the western end of the disttrict and of the highway, to Lockesburg in the same county, a distance of about fifteen miles, there was another railroad known as the De Queen and Eastern Railroad. Lockesburg was the commercial center of all the eastern part of the road district. The farm products in the territory around Lockesburg were ordinarily delivered for transportation to the De Queen & Eastern Railroad Company, and the latter carrier hauled said products to De Queen, and if destined beyond De Queen, to the north or south, delivered them to the petitioners. Some of the products, although not many, were delivered to another railroad, which extended from De Queen to Valiant to the southwest in the State of Oklahoma. The assessors in substance testified that in their opinion there would be a benefit to the railroad property, but they admitted on cross-examination, that the benefit would be indirect. Their only ground of belief, that there would be a benefit, was that

there would be an increase in tonnage. Assessor Brady testified that the railroad, by reason of the improvement "absolutely gets no more products from the farm than it got before the road was built." He further said that if the railroad did not get to haul an ear of corn nor a bale of cotton more, then the railroad got no benefit. The same witness further testified that the highway would not enable the farmers in the district to produce a single blade of grass or ear of corn more than they are now producing. The same assessor then admitted that in making the assessments, they taxed the railroad for a benefit that went to the farm, at least in part. Generally, the theory upon which the exorbitant sum of $21,270.00 was laid on the two miles of petitioners' property was that the farmer would have an easier access to the market. The trial court stated that such was the fact. The petitioners introduced testimony covering the entire district, and showing in detail the amount of cultivated land, the amount of uncultivated land and the amount of land that can never be placed in cultivation. From 75 per cent to 90 per cent of the land that can ever be cultivated, is actually in cultivation. The district has much fertile land which has been in a high state of cultivation for a long number of years. The farm lands are worth probably from $5.00 an acre to $100.00 an acre, and even more. The evidence shows that the conjectural and possible benefit due to increased tonnage cannot be sustained, because there is not enough uncultivated land in the district to increase the tonnage so as to justify an enhancement in petitioners' property amounting to $21,270.00. In addition, it is shown in the record that the two miles of railroad within the district cannot alone earn the increased tonnage, and therefore the earnings due

to increased tonnage must be earned by the entire road. It is also shown that the two miles constitute less than one-fourth of one per cent of the entire line. It is also shown that the petitioners, out of each $1,000.00 of gross revenue hauled, received a profit of $237.30, the operating ratio of the petitioners being 76.27 per cent. The assessors admitted that they were advised by the commissioners that there would be a bond issue of about $200,000.00, and the bond buyers required an assessment of at least $550,000.00. Most of the farm lands were assessed according to a zone method; some of the assessments running as low as $2.00 per acre. The zone method was not applied to the petitioners' right of way. The evidence was undisputed that the increased tonnage would be handled by the entire line, and the enhancement would therefore extend beyond the confines of the district. It was shown that to add $21,270.00 to the two miles of road in the district, would increase the value of the entire line $8,500,000.00. It was also shown by the evidence of E. Phelps, Tax Commissioner, that if the highway increased the tonnage so as to bring in an increased gross revenue of $1,000.00, petitioners would enjoy a net profit of $237.30. That would be an earning of thirty and one-half cents (30½¢) for each mile of railroad. Therefore, the mileage within the district would earn sixty-one cents (61¢). By capitalizing that, the railroad, by reason of the construction of the highway, would have added to it the value of $10.17. Under those facts, any assessment reasonably in excess of that amount would be illegal and void.

The petitioners called their agriculturists, traffic men, operating men, and many other representatives, and proved by them that there would be no increase in traffic by reason of

the construction of this highway, and there would be no benefit whatever to the property of the petitioners. The assessors and the commissioners did not give the slightest ground for contending that there would be an enhancement in traffic, except a general belief to that effect. The petitioners introduced the county surveyor and the other witnesses above referred to, showing the exact condition of almost every acre in the district. One of the assessors, Brady, testified that he owned forty acres of land which was worth $2,000.00. That forty acres was valued on the tax books at $300.00. Benefits were assessed against it at $180.00. If the assessors had assessed petitioners' property at the same rate, petitioners' taxes could not exceed $1,080.00. The petitioners contended that the evidence of the assessors and the commissioners and all the other evidence of the respondents utterly fails to show that there will be any enhancement in the value of the petitioners' property. Petitioners therefore contend that the assessment against their property in the district in the sum of $21,270.00 is confiscatory, discriminatory, unfair, unjust, illegal, and void, and deprives them of their property without due process of law, and denies to them the equal protection of the law, contrary to section one of the Fourteenth Amendment to the Constitution of the United States.

This question was raised, as required by the Alexander Law, by the petitioners in the County Court. The said Alexander Law, as this court held in the case of The Kansas City Southern Ry. Co. *vs.* Road Improvement District No. 6, 256 U. S., 658, fixed no guide for making assessments. The assessors in this case admitted that they were not familiar with railroad property, railroad earnings, or returns on rail-

road investments. They show no sound basis upon which they can sustain the enormous assessment leveled against petitioners' property. Section 11 of the Alexander Law (Arkansas Acts, 1915, p. 1412) requires the assessors to assess the property within the district, benefits received by said property by reason of the improvement.

As before shown, benefits cannot be assessed unless there will be an enhancement. As provided in sections 13 and following, the petitioners appeared in said County Court, as required by the said Alexander Law, and alleged in writing that the said assessments were unjust, unfair, confiscatory and void, and deprived the petitioners of their rights as guaranteed to them by section 1 of the Fourteenth Amendment to the Constitution of the United States. It was also alleged by petitioners, that said assessments were excessive, unfair and unlawful, in violation of said Constitution of the United States. It was further contended that said assessments were an unlawful burden on interstate commerce, contrary to section 8 of article I of the Constitution of the United States.

Those objections made in the County Court were renewed and preserved in the Supreme Court of the State. In each court the petitioners were denied relief. The sole question, therefore, involved here is whether upon the undisputed evidence the said assessments are in violation of the petitioners' rights under section 1 of the Fourteenth Amendment to the Constitution of the United States.

By reason of the above facts, which are shown in the record, the petitioners claim that there was no evidence in the record to show that the property of the petitioners would be enhanced in value in any sum whatever. They further

claim that the action of the assessors, the County Court, the Circuit Court of Sevier County, and the Supreme Court of the State of Arkansas, in affirming said assessments, denies to the petitioners the equal protection of the laws, and takes from them their property without due process of law, contrary to the Constitution of the United States, above referred to, said assessments being arbitrary, unjust, confiscatory, unreasonable, discriminatory, and void.

Petitioners further asserted in all the lower courts, that their property was not benefited, and could not be benefited by the construction of the highway, and that the assessments were not alone upon the property in the district, but upon petitioners' property, outside of the district, and upon the business and commerce of the petitioners. By reason of the decisions of the lower courts, including the Supreme Court of the State of Arkansas, there was drawn in question the right, privilege, and immunity claimed by the petitioners under section 1 of the Fourteenth Amendment to the Constitution of the United States, and the decision of said Supreme Court of the State of Arkansas, by affirming said assessments, was against said right, privilege, and immunity of the petitioners, so set up and claimed by said petitioners under said section 1 of the Fourteenth Amendment to the Constitution of the United States, and under the commerce clause of said Constitution. Petitioners therefore respectfully submit that the questions involved, briefly stated, are as follows:

Questions Involved.

1. Upon the undisputed evidence in the proceedings herein, there is no testimony to show that the property of

the petitioners will be benefited by the highway contemplated, and proposed to be built by Road Improvement District No. 3, of Sevier County, Arkansas.

2. In making the assessments against the property of the petitioners, the assessors and commissioners included in the valuation of the property of the petitioners the tangible and the intangible property of the petitioners, and included in said value a part of the personal property of the petitioners, and at the same time assessed benefits against the farms and lands in said improvement district without assessing any of the personal property on said farms, and assessed in said district no personal property, except that which belonged to the petitioners.

3. In making said assessment of benefits the assessors and commissioners included property and property rights of the petitioners which are not located within said road district, and included the business and good will of the petitioners, and in part some of its property outside of said district, and thereby levied assessments upon property of petitioners not in the district, and thereby deprived the petitioners of their property without due process of law, in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

4. In making the assessments against the property of the petitioners, the assessors and commissioners took into consideration the use of the property of the petitioners and did not take into consideration the use of the other real property located in said district.

5. In making said assessments against the property of the petitioners, the said assessors and commissioners extended the

line of said improvement district for the purpose of including in said district, the two miles of the right of way and property of petitioners, and extended said district only far enough to include said property of the petitioners, and purposely left out of said district more than one-half of the real property located in the town of De Queen, although all the property located in the town of De Queen was benefited. This leaving out of the real property in De Queen, and not taxing the same, was an unlawful and unconstitutional discrimination against the petitioners, and renders said assessment illegal and void.

6. The assessment against the property of the petitioners of twenty-one thousand two hundred and seventy dollars ($21,270.00) as a benefit is confiscatory, arbitrary, illegal, and void, because it is impossible for the property of the petitioners to be enhanced in value to that extent. Such assessment therefore takes the property of the petitioners without due process of law, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

7. The Supreme Court of Arkansas erred in holding that the act of the General Assembly of the State of Arkansas, approved February 7, 1920, was a legal legislative determination of the correctness of said assessments. The said act was passed after the issues in this cause were made up, and is an unlawful attempt to exercise judicial power by the legislative department of the government, and is subject to all the constitutional objections made herein, as to said assessments, and the said act, if enforced, will deprive these petitioners of their property without due process of law, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Arkansas erred in holding that there was any substantial evidence to support the findings of the Circuit Court and of the county court.

9. The assessors and commissioners, in making the said wrongful assessments against the property of the petitioners, based their action solely upon the contention by said assessors and commissioners that the construction of the highway in question would result in the general up-building and general improvement of the surrounding country, and would thereby result in bringing increased traffic to the petitioners at some time in the future. It was contended by said assessors and commissioners that that probable and conjectural increased revenue would enhance the value of petitioners' property within the district, in a sum equal to the assessments made against petitioners' property. The petitioners assert that the probable increased traffic is not a special and peculiar benefit, and an enhancement of value within the meaning of the law, and that such a construction of the Act No. 338, above referred to, deprives the petitioners of their property without due process of law, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

10. The plan of assessing the main line at $3,500.00, and the side tracks separately and with an additional valuation is double taxation. The side tracks are in reality a part of the main line system. Under improvement district laws said side tracks have no separate existence or valuation. Therefore, to tax the main line, and then tax an additional sum on the side tracks, is double taxation.

11. The main line valuation legally, and in effect includes the buildings. The assessors and commissioners assessed the

buildings and side tracks separately, and at the same time included said buildings and side tracks in the main line valuation, thus resulting in double taxation, both as to the buildings and side tracks, and necessarily, therefore, creating double taxation on all the property of the petitioners.

12. The assessors and commissioners in assessing property other than railroad property, did not assess the improvements and the land separately. If the improvements on other real property were assessed at all, they were assessed as a part of the real property. The side tracks and buildings of petitioners are a part of their real property, and if assessable at all, they are included in the real property. The assessors and commissioners, therefore, adopted a different plan, and in effect excluded the improvements on other real property, and included the side tracks and buildings on petitioners' property.

13. There is no evidence in the record to show that the building of the proposed highway would enhance the value of any of the side tracks or buildings of the petitioners, and therefore there is no basis for assessing any benefits against such side tracks or buildings.

14. The assessors and commissioners assessed the alleged benefits on farm lands and other real property at an undervaluation of said property, and assessed the alleged benefits against the property of the petitioners on an overvaluation, thus discriminating against the petitioners, and depriving them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

15. The law under which the assessments in question have been made against the property of petitioner was in-

tended to and does provide a ratio of taxes assessed against the property of your petitioners to benefits received by such property, if any, much higher than is the ratio of taxes assessed against the other property in the district to the benefits accruing to such other property.

16. The theory upon which large benefits are assessed against the property of petitioners is based upon a pretended expectation of future earnings and distributed values having no foundation in fact, while other property in the district is assessed according to area and position, and with a reasonable probability that such other property will receive substantial benefits.

The petitioners therefore respectfully submit that the decision of the Supreme Court of the State of Arkansas upon the facts above set forth, and the record shown herein, is erroneous by reason of each of the assignments above set forth.

Wherefore, your petitioners say that because of the denial of their rights under the said Sections of the Constitution of the United States above referred to, said petitioners are entitled to a writ of certiorari from this court, under Section 237 of the Judicial Code as amended.

In compliance with the rules of this court, your petitioners furnish and herewith attach as an exhibit to this petition, a duly certified copy of the entire transcript of the record in this cause, including the proceedings of the Supreme Court of the State of Arkansas. Your petitioners respectfully state that there has been granted to said petitioners a writ of error by the Chief Justice of the Supreme Court of the State of Arkansas, and the record on said writ of error is now on file in this court. Petitioners make this application for

certiorari to the end that this cause may be presented to this court without any question as to the procedure. Petitioners ask that the certified copy of the record now on file, in addition to the writ of error, be taken as the certified copy on this petition.

Wherefore, your petitioners respectfully pray that a writ of certiorari may issue out of and under the seal of this court, directed to the Supreme Court of Arkansas, to command said court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record and the proceedings of said Supreme Court in said cause therein, entitled The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company against Road Improvement District Number 3 of Sevier County, Arkansas, and numbered in said Supreme Court, 7392, to the end that said cause may be reviewed and determined by this court, as provided by the provisions of the Act of Congress known as the Judicial Code, by the amendments thereto, and that said cause be reversed, and that the petitioners may have such other and further relief in the premises as to this court may seem appropriate, and in conformity to said Acts of Congress, and that said judgment of the Supreme Court of the State of Arkansas be set aside, and that said assessment against the property of the petitioners be set aside.

Respectfully submitted,

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,
THE TEXARKANA & FORT SMITH
RAILWAY COMPANY,
By JAMES B. McDONOUGH,
Their Attorney.

AFFIDAVIT.

STATE OF ARKANSAS,
County of Sebastian, ss:

I, James B. McDonough, on oath, state that I am counsel for The Kansas City Southern Railway Company, and that the matters and things set forth in the above and foregoing petition are true to the best of my knowledge and belief.

I further state that the officers of the said The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company are absent from the State of Arkansas.

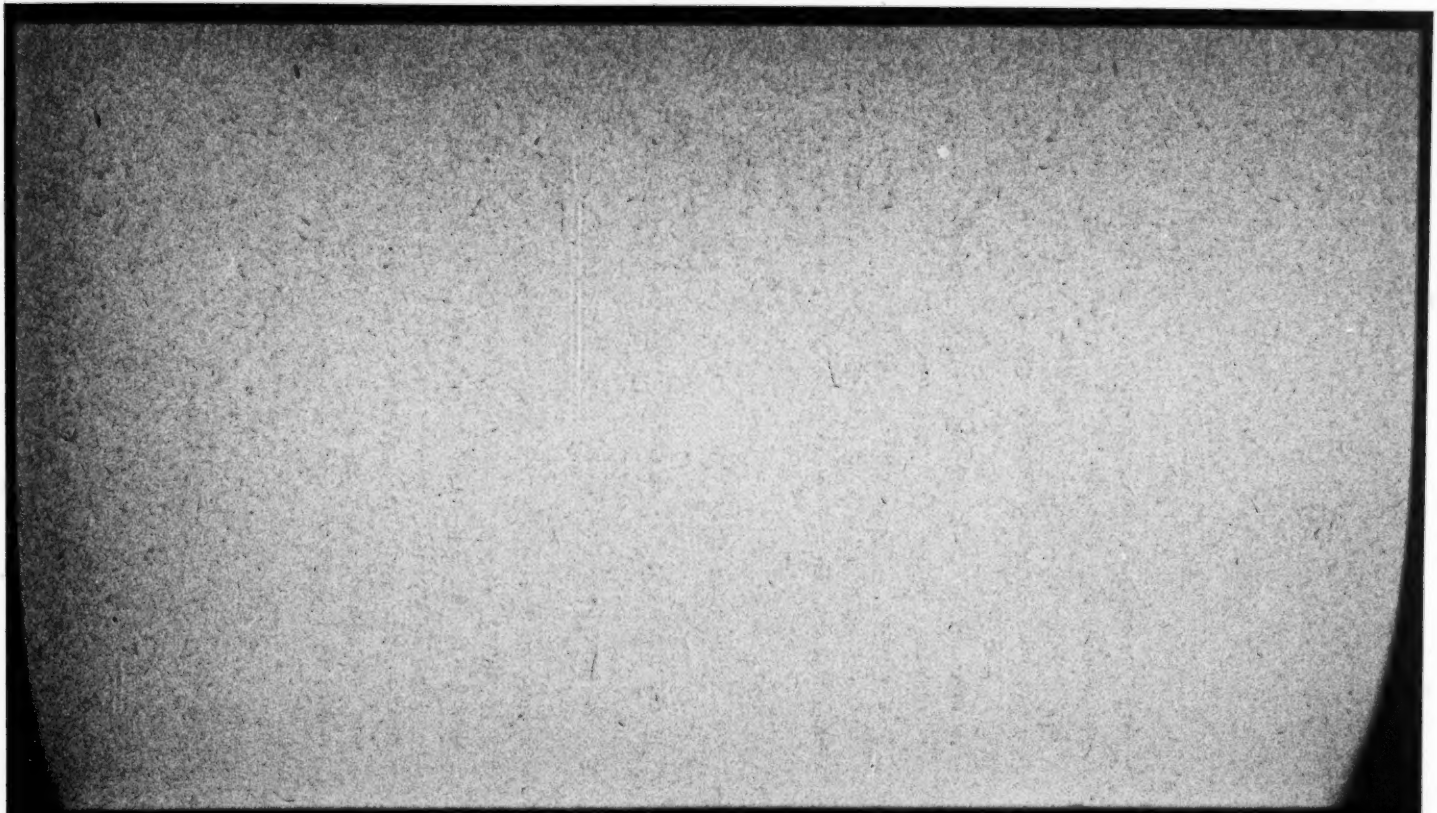
JAMES B. McDONOUGH.

Subscribed and sworn to before me this 30th day of March, 1923.

[SEAL.] ANNA ALTMILLER,
Notary Public.

[Endorsed:] The Kansas City Southern Railway Company and The Texarkana & Fort Smith Railway Company, petitioners, *vs.* Road Improvement District Number 3, of Sevier County, Arkansas, *et al.*, respondents. Petition for writ of certiorari to the Supreme Court of the State of Arkansas.

[Endorsed:] File No. 29,505. Supreme Court U. S. October Term, 1922. Term No. 955. The Kansas City Southern Ry. Co. *et al.*, P. E., *vs.* Road Improvement District No. 3, etc., *et al.* Petition for writ of certiorari. Filed April 2, 1923.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. ~~283~~ 33

THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND THE TEXARKANA & FORT SMITH RAILWAY COMPANY

vs.

ROAD IMPROVEMENT DISTRICT No. 3 OF SEVIER COUNTY, ARKANSAS, ET AL.

In Error and on Writ of Certiorari to the Supreme Court of the State of Arkansas.

BRIEF OF PLAINTIFFS IN ERROR.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 269

THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND THE TEXARKANA & FORT SMITH RAILWAY COMPANY

vs.

ROAD IMPROVEMENT DISTRICT NO. 3 OF SEVIER COUNTY, ARKANSAS, ET AL.

In Error and on Writ of Certiorari to the Supreme Court of the State of Arkansas.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT.

The plaintiffs in error herein (for convenience referred to as the plaintiffs) seek a reversal of the judgment of the Supreme Court of Arkansas, which affirmed an assessment of benefits in the sum of $21,270 upon plaintiffs' railroad property in a road improvement district in Sevier County, Arkansas.

A unpaved public highway extended from DeQueen, Arkansas, easterly a distance of about 18 miles. It was proposed to improve this highway by giving it a hard surface, and accordingly, under Act 338 of the 1915

session of the Arkansas legislature, the defendant Road Improvement District No. 3 was organized, the boundaries of which are shown in Exhibit A (Rec. 164). The district was some 18 miles long, extending easterly from DeQueen, and approximately six miles wide. As originally established, the district did not include any part of the city of DeQueen, nor any part of the railroad property of the plaintiffs. Afterwards, as appears from Exhibit B (Rec. 186), the boundaries of the district were extended westward so as to include a part of the city of DeQueen, thus taking in the tracks and other property of the plaintiffs and making them subject to the assessment of benefits. It was estimated that the cost of the proposed improvement would be $200,000 (Rec. 259), and it was intended that bonds would be issued by the district in that amount and the proceeds used in making the improvement. The total assessed value of the acreage and town lots in the district, for state and county purposes, was $897,660, and the benefits assessed thereon were $488,354 (Rec. 244). Benefits aggregating $510,033 were assessed against all the property in the district (Rec. 32-144).

Benefits were assessed against the plaintiffs as follows: The sum of $7,000 for two miles of main track, with an assessed valuation of $54,000; the sum of $5,000 for 9¾ miles of side track, with an assessed valuation of $29,250, and the sum of $9,270 for buildings, with an assessed valuation of $46,265, or a total benefit assessment of $21,270. The assessed valuations were those made by the State Tax Commission. This assessment was upheld by the lower court (Opinion, Rec. 307), and in the Supreme Court of Arkansas (Opinion, Rec. 311). There was no evidence that the proposed improvement would directly benefit any of the property of the plaintiffs. The sole ground for the assessment was a sup-

posed indirect benefit to their property arising from a prospective increase in their traffic, due to the proposed improvement.

The local situation may be briefly stated as follows: The line of the plaintiffs extends generally from Kansas City, Missouri, southward to Port Arthur, Texas, on the Gulf of Mexico, running through Sevier County, Arkansas, and extending for a distance of two miles through the district. The line in Sevier County is owned by the Texarkana & Fort Smith Railway, and operated by the Kansas City Southern Railway Company. DeQueen is a city of 2,715 people (Census 1920). The only other towns in the district are Lockesburg, with 798 inhabitants, and Geneva, with 62. The freight division terminals of the plantiffs are located at DeQueen, and there are, in the district, in addition to two miles of single main track, 9.56 miles of yard tracks, referred to in the assessment as "side track" (Rec. 166), and also a depot, roundhouse, yard office, section house, water tank, oil storage tank, tool house, store house and mechanical department buildings (Rec. 264), used exclusively for railroad purposes.

The DeQueen & Eastern Railway Company owns and operates a line of standard gauge railroad, extending east from DeQueen beyond the eastern limits of Sevier County and running through Geneva and Lockesburg, substantially parallel with the public highway in question. The Texas, Oklahoma & Eastern Railroad, a standard gauge railroad, owned by the DeQueen & Eastern Company, is operated westerly from DeQueen, and extends to a junction with the Frisco, a distance of about 50 miles.

The Bank Head highway shown on the map is a hard surface road, extending from DeQueen easterly beyond the eastern boundary of Sevier County, and also ex-

tending west from DeQueen. The Wilson highway is a hard surface road, extending north and south from DeQueen. Road No. 7 crosses the district at right angles, and is either paved or in process of paving. The territory within the district is an old, settled farming country, divided into small holdings. Of the tracts of farm lands assessed with benefits, 246 were 80 acres or more in area, and 1,587 under 80 acres in extent. The tracts were assessed for general tax purposes at uniform rates per acre. The main agricultural product has, in the past, been cotton. The testimony was that the growing of cotton was being abandoned and the land was being more and more devoted to the production of fruits and vegetables, referred to by the witnesses generally as "truck farming."

Reasons were given why this road, although running substantially at a right angle to the railroad of plaintiffs, would not increase traffic over it to any great extent, if at all. The district has been settled many years, and a large part of the available land is already under cultivation. The cultivation of fruit and vegetables is brought about to a very considerable extent by substituting these crops for cotton. Fruit and vegetables must be loaded and put under refrigeration as quickly as possible, and this will cause the greater part of the carload shipments to be loaded at Lockesburg on the line of the DeQueen & Eastern Railroad. These shipments may ultimately reach the line of the plaintiffs at DeQueen, or they may be transported over a railroad affiliated with the DeQueen & Eastern to the junction with the St. Louis-San Francisco Railroad, which is about fifty miles west of DeQueen. Products may move eastward from the district to the town of Nashville on the Missouri Pacific, and be shipped over the latter railroad. The Bankhead highway and road Number 7, both

of which are improved, or are being improved, would receive some of the travel, from Road District Number 3. Only one witness for defendant testified as to the amount of traffic. He did not testify that there had been an increase, and all the carload shipments he testified to were shipped over the DeQueen & Eastern at Lockesburg. (Rec. 285 *et seq.*) Road No. 3 was not yet completed, at the time the case was tried, so that an increase in traffic, if any, could not be said to be due to road Number 3.

It was also testified that, in this region, the hard surfaced roads paralleling the plaintiffs' line had taken away the local business of plaintiffs, which now moved by motor trucks, and that even roads running at right angles to plaintiffs' line, such as road Number 3, would, by connecting up with cross roads, enable the trucks to reach more towns, and further decrease the local business of the railroads (Rec. 227).

The statute under which the proceeding was had lays down no specific method by which benefits are to be determined. It provides that "the assessors shall assess the benefits to be received by the various and particular tracts of land, railroads, tram roads and other real property within the district by reason of the improvement" (section 5421, Crawford and Moses Digest of the Statutes of Arkansas, 1921). The same section requires the assessors to show in the assessment roll the name of the owner, the subdivision of the land, the number of acres, the present assessed value, the assessed benefits per acre, and the total assessed benefits to each tract. As to railroad property, the same section requires the assessors to show the name of the railroad owner, the mileage "in the district," the present assessed value of the railroad "and the amount of assessed benefits per

mile," and the total amount of benefits assessed against said railroads.

It appears from the testimony of the assessors, who assessed the benefits (Rec. 28, 29, 259), that the commissioners of the road district advised the assessors "how much benefits they wanted to raise in the district." Accordingly, the assessors computed the rate it would take to raise this amount of benefits, and divided the district into zones, and made the assessment accordingly. They had not at the time been definitely told the kind of road contemplated by the proposed improvement. The assessors testified that as to non-railroad property, they assessed as benefits 60, 50 or 40 per cent of the assessed value on the property located in zones 1, 2 and 3 (Rec. 30). They also stated that in making their assessment, they differentiated between improved and unimproved property; but the assessment roll (Rec. 57, *et seq.*) demonstrates that this is true only in exceptional cases. As to railroad property, their assessment of benefits was without any rule or principle, except what they thought was right and fair.

The average assessment for general taxation of all the acre property in the district was $6.432 per acre. As a matter of fact, the market value of the lands in the district, according to one of the assessors, was from $25 to $50 per acre (Rec. 276). The assessment of the property of plaintiffs was on a 50 per cent. basis, that is, it was assessed at 50 per cent. of its true value.

There was a large amount of testimony to the effect that the proposed improvement of the highway in question, while of benefit to the farm land within the district by giving the farmers better access to market, would not benefit in any way the property of the plaintiffs within the district, consisting, as above stated, of main track, terminal yards, and the usual terminal structures. On

the other hand, there was testimony adduced by the district to the general effect that the paving of the highway, while not increasing the agricultural products within the district, would facilitate the hauling of them to the railroads and to market generally, and thereby increase the traffic which the plaintiffs would enjoy, and it was argued that this prophetic increase in traffic would constitute a benefit to the railway property in the district, and so justify the assessment. The assessment of benefits to the property of the plaintiffs rests, in the judgment of both State courts, upon the indirect benefit arising, or supposed to arise, from an increase in traffic to be realized in the future. In other words, the judgment of the State courts rests upon the assumption that the prospect of such increased traffic has actually benefited the property of the plaintiffs *within the district* by increasing its value in the sum of $21,270.

This we contend, is unreal and fanciful, and has no support in fact. We further contend that the assessors, in their assessment of benefits, applied one rule to non-railroad property and an entirely different rule to railroad property, and in so doing arbitrarily discriminated against the plaintiffs to such a shocking extent as to invalidate their assessment under rules of law well settled in this Court. The case is here on writ of error, and also upon petition for writ of certiorari.

Plaintiffs' right to a writ of error is amply supported by the decision of this court in the case of *Kansas City Southern Ry. Co.* v. *Road Improvement District No. 6*, 256 U. S. 658, the situation, in the two cases, being substantially the same. In that case this Court said:

> Petitioners duly maintained that the assessment upon their property was unequal, arbitrary, unreasonable and in violation of the due process

and equal protection clauses of the Fourteenth Amendment. The state courts held to the contrary, and in effect declared the statute providing for the Road Improvement District authorized the action taken by the Board and that so construed it was a valid enactment. 139 Ark. 424, 215 S.W. 656; 217 S.W. 773. The validity of the statute having been adequately challenged, the cause is properly here upon writ of error and the petition for certiorari will be denied.

Plaintiffs specify the errors relied upon as follows:

SPECIFICATION OF ERRORS.

1. The Supreme Court of Arkansas erred in affirming the assessment of benefits against the property of plaintiffs.

2. The Supreme Court of Arkansas erred in refusing to hold that the assessment of benefits against the property of plaintiffs was so arbitrary and so grossly excessive as to violate the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of Arkansas erred in refusing to hold that the assessment of benefits against the property of the plaintiffs was relatively unequal and discriminatory because not made on a uniform basis as compared with the assessment of other property in the district, and that it, therefore, violated the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of Arkansas erred in holding that the action of the state legislature in attempting to validate the assessment against the property of the plaintiffs had the effect of curing its invalidity.

ARGUMENT.

I.

The assessment in this case is so plainly arbitrary, and so grossly excessive as to amount to confiscation of the property of Plaintiffs.

It is undoubtedly true, as this Court said in *Branson* v. *Bush*, 251 U. S. 181, that anything which develops the territory that a railroad serves must necessarily be of benefit to it, and that no agency for such development equals that of good roads.

It is also a matter of common experience that, in many instances, good roads have the effect of diverting traffic from railroads to motor vehicles. In the case of the highway in question, it would be natural to expect that it would facilitate the hauling of traffic to Lockesburg, on the DeQueen & Eastern, for shipment by rail at that point. This line connects with the plaintiff's road at DeQueen, and also with the Frisco at Valliant, located some fifty miles west of DeQueen. It would be to the interest of the DeQueen & Eastern to give itself the benefit of the long haul to Valliant on shipments to distant points which could be routed by the Frisco and its connections. It also appears that there is a fairly good road from the eastern end of the highway in question to Nashville, a station on the Missouri Pacific, and that some farm products from the district in question now go to Nashville (Rec. 243). It is apparent, therefore, that any increase in traffic coming from the district in question would be shared by the DeQueen & Eastern, the Frisco and the Missouri Pacific, as well as by the plaintiffs. What change the future may bring in the way of building highways beyond those now being con-

structed or improved, or the building of railroads, is too uncertain to be the subject of speculation.

Let us assume, however, for the sake of the argument and in deference to the opinion of the State courts, that, balancing the traffic diverted from the plaintiffs against what they would gain by the improved highway, there would be a net balance in favor of the latter; in other words, that there would be a net increase in freight or passenger earnings, or both, caused by the improvement. It was not claimed in the State court, and in the nature of things it cannot be claimed, that any benefit will accrue to plaintiffs' railroad except such as arises from this theoretical and speculative increase in traffic. It is obvious that the physical property of the railroad, consisting of its right of way, tracks and buildings within the district, will not be in any way benefited by the improvement; its value will not thereby be enhanced.

The precise question, therefore, is whether this assumed increase in traffic, caused by the improvement of the highway in question, will so enhance the value of the railroad within the district as to justify an assessment of $21,270. It is to be borne in mind that the only justification for the assessment is a supposed corresponding increase in the value of the railroad within the district. If its value is not enhanced to this extent, the assessment is in violation of the Fourteenth Amendment.

The value of railroad property bears a relation to the income which it affords. Undoubtedly, a permanent increase in profitable traffic will tend to increase the value of a railroad as an entirety, and this value will be distributed or spread over the entire line. The value of a railroad results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. This rule is no longer open to question in this Court.

This Court, in *South Utah Mines & Smelters* v. *Beaver County*, a tax case decided May 21, 1923, held that the value of property does bear a relation to its income, saying:

> The value of property bears a relation to the income which it affords. If it be property whose production is uniform and of indefinite duration the capitalization of the net income derived from it at the going rate of interest, in the absence of a more certain method, will furnish a reasonable measure of the value.

In *Branson* v. *Bush*, *supra*, the same principle is stated, where the value of railroad property was under consideration, the court saying, quoting from *R. R. Co.* v. *Backus*, 154 U. S. 439:

> But the value of property results from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value.

In *Monongahela Nav. Co.* v. *U. S.*, 148 U. S. 312, a lock and dam in the Monongahela River were condemned by the Government, and the question arose as to the compensation to which the owner was entitled. It was held that the owner was entitled to "the full equivalent therefor," and this was measured by the value of the property, and this value was largely determined by the earnings of the property. The court said (p. 328):

> How shall just compensation for this lock and dam be determined? What does the full equivalent therefor demand? The value of the property, generally speaking, is determined by its productiveness —the profits which its use brings to the owner. . . . The value, therefore, is not determined by the mere

cost of construction, but more by what the completed structure brings in the way of earnings to its owner. For each separate use of one's property by others, the owner is entitled to a reasonable compensation, and the number and amount of such uses determines the productiveness and the earnings of the property, and, therefore, largely its value.

In *Omnia Commercial Co.* v. *U. S.*, decided by this Court on April 9, 1923, reference is made to the *Monongahela* case, *supra*, and after quoting therefrom, the court said:

> The lock and dam constituted, in effect, a going concern, whose value was of course affected by what it would produce.

In *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S. 185, the property of an express company, both intangible as well as tangible, had been assessed at $4,189,818. The value of its tangible property was $1,159,491. The company insisted that it should be assessed only at the lower figure; but this contention was denied by the court, saying:

> It is worth $4,189,818 for the purpose of income to the holders of the stock and for the purposes of sale in the markets of the land.

In *St. Louis & East St. Louis Electric R. Co.* v. *Missouri*, 256 U. S. 314, the question was the value of .346 of a mile of track in the State of Missouri, assessed at $186,019, of which $13,019 represented tangible, and the remainder intangible property. It was objected that the assessment should be limited to the value of the tangible property, but it was held that the company possessed certain valuable contracts which gave to its property a greater earning power, and therefore a higher value, the court saying:

It was these contracts which gave the company's small extent of physical property an earning capacity, and therefore a value.

Assuming, therefore, that increased earnings make for increased value of railroad property, and assuming, further, that the improvement of the public highway in question will theoretically, and perhaps actually, increase to some extent the traffic of the railroad, and hence increase to a corresponding extent its value, will the enhanced value of the railroad property within the district be sufficient to justify the assessment made against it? Our contention is that an analysis of the situation, guided by these principles, amounts to a complete demonstration that the supposed enhancement in value of the railroad within the district is so negligible and trivial as to make the assessment here in question a mere travesty.

It is fundamental that no benefit can be assessed against property outside of the Road Improvement District. "To do so under any formula," said this Court in *Union Tank Line* v. *Wright*, 249 U. S. 274, "would violate the due process clause of the 14th Amendment." The same principle finds ample illustration in *Fargo* v. *Hart*, 193 U. S. 490. Under the express terms of Section 11 of the Act in question, the assessment of benefits is limited to the "railroad and other property *within the district* by reason of the improvement." If the property of other persons outside of the district is benefited, no assessment is to be made against it. As an illustration, the property of the Frisco which is operated through Valliant, will probably receive benefits as great, if not greater, than those received by the plaintiffs, but its property is outside the limits of the improvement district, and hence no assessments may be made against it. The final question, therefore, is, will there be any en-

hancement in value of the railroad's property *within the district*, caused by the proposed road improvement, sufficient to justify the assessment made? The effect of the increased traffic due to the improvement of this highway cannot in the nature of things be limited to the railroad property within the district. The segment of the railroad within the district is "a part of the railroad unit" (*Branson* v. *Bush, supra*). The value of the property of the railroad necessarily rises and falls as a unit. As this Court said in *Branson* v. *Bush*:

> It is practically impossible—at least in respect to railroad property—to divide its value, and to determine how much is caused by one use to which it is put and how much by another.

To take an extreme illustration, assume the discovery of oil or other mineral in large quantity adjacent to the track of the railroad in Sevier County, Arkansas, and the sudden and extraordinary increase in traffic occasioned thereby. This would not increase the value of the railroad adjacent to the oil wells or the mines over and above any other piece of track in the railroad system. The earnings from this traffic would be enjoyed by the railroad as a unit, and whatever increase in value might be occasioned thereby would be distributed and spread over all the mileage under one operation and control.

This court said in the *State Railroad Tax* case, 92 U. S. 579, 608, quoted in *Branson* v. *Bush, supra*:

> It may well be doubted whether any better mode of determining the value of that portion of the track within any one county has been devised than to ascertain the value of the whole road and apportion the value within the county by its relative length to the whole.

"Every mile," said this Court in *Fargo* v. *Hart*, *supra*, "is a necessary condition of the use of the rest of the line beyond, and therefore a reflex condition of the value of the line behind it."

The assessment of railroad property for State and county purposes by the State of Arkansas recognizes that the value of the entire railroad is a unit, and it assesses within the State, and within each political subdivision, that portion of the value which the mileage bears to the entire mileage. In 1911 (Acts, Arkansas, 1911, page 233), the State enacted a law for the assessment and taxation of all property, tangible and intangible, of railway companies. In Section 1, it is provided that the Tax Commission

> shall ascertain the value of all property, tangible and intangible, including the franchises (except the right to be a corporation), railroad tracks, rolling stock, etc.

Section 2 provides:

> The franchises (other than the right to be a corporation) of all railroads, express, telegraph and telephone companies, are declared to be property for the purpose of taxation and the value of such franchises shall be considered by the assessing officers when assessing the property of such corporations. In valuing for assessment purposes the property of such corporations the Arkansas Tax Commission shall determine the total value of the entire property of the corporation, tangible and intangible.

Benefits to plaintiffs' property in the sum of $7,000 are assessed against two miles of main track, having an assessed valuation of $54,000; benefits in the sum of $5,000 are assessed against 9¾ miles of side track having an assessed valuation of $29,250; and benefits in the

sum of $9,270 are assessed against buildings in DeQueen having an assessed valuation of $46,365. The State Tax Commission, in compliance with the statute, has assessed the side track and buildings separately from the main track, but it is obvious that these side tracks and buildings cannot, by any stretch of the imagination, be benefited—that is, enhanced in value—by increased traffic, except as they may be considered as a part of the entire transportation unit. The most favorable view of the matter, therefore, is to treat the side tracks and buildings as a part of the main line mileage within the district, and to assign the entire benefit assessment, $21,270, to the two miles of main line.

The valuation of $10,635 per mile, used by the assessors in this case, represents the Arkansas mileage proportion of the entire value of the system. "There are," as this Court said in *Louisville & Nashville R. Co.* v. *Greene*, 244 U. S. 522, 540, "two recognized methods, known as the stock-and-bond plan and the capitalization-of-income plan" of determining the value of railway property as an entirety. After this value has been ascertained, it becomes a simple problem to assign to the State of Arkansas and to its several subdivisions their proportion of value on a mileage basis.

Assuming an increase in traffic at DeQueen by reason of the proposed improvement (which is a doubtful assumption), and that such traffic will be profitable, and that the result will be to increase the value of the entire railroad property, 800 miles long, and bearing in mind that only the enhancement in value within the district itself can be assessed with benefits, we proceed to inquire how much increase in traffic the railway company will have to realize, from that source, in order to justify the proposed assessment.

Let us assume, for purposes of illustration, that the railroad will enjoy an increased annual gross revenue at DeQueen (the only station in the district), due entirely to the proposed improvement of the highway, of $1,000 per year (which is probably excessive), and that the operating ratio is 75 per cent., *i. e.*, of each dollar of gross revenue, 75 cents represents expenses and 25 cents represents net revenue or profits. (The average operating ratio for the five-year period ending December 31, 1920, was 76.27 per cent., Rec. 169.) There would result a net revenue, or profit, of 25 per cent. of this gross revenue, amounting to $250 per year. This net revenue, or profit, would necessarily be spread over the entire mileage of 800 miles. The segment within the district, two miles long, is .25 of one per cent. of the entire mileage. The amount of net earnings, or profits, assignable to the two miles within the district (.25 of one per cent. of $250), would be $0.62. If we capitalize at six per cent. these net earnings, or profits, amounting to $0.62, in order to ascertain the value which they may be said to represent, the result is $10.33. This would represent the increased value of the two miles of railroad property within the district, arising from an annual increase of $1,000 in freight and passenger gross revenue at DeQueen.

If we assume that the annual gross revenue from traffic in the district is increased tenfold over the sum used in the foregoing illustration, the result would be an enhancement in value of the railroad property within the district of $103.33.

If we assume an increased annual gross revenue of $100,000 due to the improvement (which is greater than the extreme figures used in the opinion of the Court (Rec. 308), and which of course, is so large as to be absurd), this would represent an enhancement in value

of the railroad property within the district of $1,033.33, which is less than five per cent. of $21,270, the amount of benefits actually assessed.

Let us now consider this assessment of $21,270, which, if valid at all, must necessarily represent an enhancement in value of the two miles of railroad property within the district resulting from an enhancement in the value of the entire property. This is at the rate of $10,635 per mile, and this sum multiplied by 800, the total mileage of the system, gives a total of 8,508,000 increase in the value of the entire line, due to the problematical and speculative increase in traffic. It is interesting to compute the extent of the supposed increase in traffic, from this road improvement, which would be necessary in order to create this enormous increase in value. It involves a steady and continuing annual profit from increased traffic of $510,480 a year, on a six per cent. basis; and if the operating ratio be taken at 75, the total gross income required, on increased traffic coming to the plaintiffs each year in the future, from the road district, would be $2,041,920.

In this connection, it is important to bear in mind that the population of DeQueen is 2,715 people, according to the census of 1920. The only other towns in the district are Lockesburg, with 798 inhabitants, and Geneva, with 62. The total gross revenue received by the plaintiffs from carload shipments of fruits and vegetables from DeQueen, Arkansas, for 1915 was $1,142.72; for 1918, $411.64; for 1920, $3,260.80 (Rec. 219). The corresponding amounts received by plaintiffs at DeQueen from the DeQueen & Eastern, for the same years, are, respectively: $1,538.51; $1,417.26, and $3,146.54. The comparison is shown on fruits and vegetables since they are the chief items of traffic from this district.

We earnestly contend that, under these circumstances, it is nothing short of a travesty to sustain an assessment of $21,270 against the property of the plaintiffs. It is fully recognized that in making local assessments certain inequalities will necessarily arise, due to the very nature of the proceeding, which it is not the policy of the law to undertake to rectify. But this is not an inequality of that character. It is a gross, glaring injustice, which comes clearly within the rule of *Kansas City Southern Railway Co.* v. *Improvement District*, 256 U. S. 648; *Thomas* v. *Kansas City Southern Railway Co.*, 43 Sup. Ct. 440; *Norwood* v. *Baker*, 172 U. S. 269; *Myles Salt Co.* v. *Iberia Drainage Dist.*, 239 U. S. 478; *Gast Realty Co.* v. *Schneider Granite Co.*, 240 U. S. 55; *Missouri Pacific R. Co.* v. *Road Improvement District*, 288 Fed. 502, and *Board of Directors* v. *Miller Pipe Line Co.*, 292 Fed. 474. It is, to quote the language of this Court in *Branson* v. *Bush, supra*:

> a flagrant abuse, and by reason of its arbitrary character the mere confiscation of particular property.

The case, we respectfully submit, comes squarely within the rule of *Kansas City Southern Railway Co.* v. *Road Improvement District, supra*, where the Court said (256 U. S. 661):

> It is doubtful whether any very substantial appreciation in value of the railroad property within the district will result from the improvements; and very clearly it cannot be taxed upon some fanciful view of future earnings and distributed values, while all other property is assessed solely according to area and position. Railroad property may not be burdened for local improvements upon a basis so wholly different from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all.

And also within the condemnation of *Thomas* v. *Kansas City Southern Railway Co., supra,* where it is said:

> But vague speculation as to future increased traffic receipts will not justify a basis of taxation which necessarily produces manifest inequality.

The assessors were acting under Section 11 of the Alexander Law, which required them to

> assess benefits to be received by the several and particular tracts of land, railroads, tram roads, and other real property within the district by reason of the improvement.

The law gave them no standard or guide by which to proceed. They were not instructed to make their assessments on an area basis, or an assessment basis, or a valuation basis, or to include or exclude improvements, or to assess benefits to railroad property in accordance with enhanced values arising from increased traffic caused by the proposed improvement. They were without chart or compass, and with no guide except their own uncontrolled discretion. It is no wonder, therefore, that they adopted one basis for farm lands and an entirely different basis for railroad property. No one knows how they arrived at $10,635 a mile. They, themselves, do not undertake, in their testimony, to disclose the process. Probably there was no process except a desire to give to the railroad company a generous share of the burden. It was an administration of the law which amounts to a violation of rights under the 14th Amendment.

It is respectfully submitted that the assessment must bear some reasonable relation to the benefits which the property is to receive from the proposed improvement. If it be conceded that an enhancement in value arising from increased traffic is a benefit, such enhance-

ment should be measured in some rational way. It is not a compliance with the spirit of the law to "lump off" arbitrarily, or guess at the benefits which a railway company may be supposed to receive. This is particularly true when, as in the present case, the assessment actually made, when examined in the light of logic and reason, leads to the absurd conclusion that the improvement of this insignificant highway in Arkansas will result in increasing the value of the property of the plaintiffs in the sum of $8,508,000.

The gross inequality which results, in practice, from an enforcement of the same law in adjoining counties affords a most cogent reason for placing some lawful and reasonable limit upon the unregulated discretion of assessors in assessing the property of railway companies with an increasingly larger proportion of the cost of public improvements. In the present case, the assessed benefits were $10,635 per mile. In the neighboring county of Lafayette, in the same State, and acting under the same law, the benefits assessed against the St. Louis Southwestern Railway Company were $2,000 per mile of main line; $1,000 per mile for side tracks, and $1,500 per mile on the Shreveport Branch (*St. L. S. W. Ry. Co.* v. *Com'rs.*, 265 Fed. 524, 528). The total assessment was $49,706. The District Court of the United States reduced the assessment to $54 per mile. The aggregate assessment was reduced from $49,706 to $10,485. These two proceedings were under the same law. Each was for the construction of a public highway. The same procedure was employed in both. In one case, the assessed benefits are $10,635 per mile, and in the other case, $54 per mile. Other instances where assessments in this same state were so arbitrary in character as to call for correction in reported cases will be found in *Kansas City Southern Railway Co.* v. *Road Improvement Dist., supra; Thomas*

v. *Kansas City Southern Ry. Co., supra;* same case below, 277 Fed. 708; *Thornton* v. *Road Improvement Dist.*, 291 Fed. 518; *Road Improvement District* v. *Missouri Pacific R. Co.*, 275 Fed. 600; *Missouri Pacific R. Co.* v. *Road Improvement Dist.*, 288 Fed. 501; *Board of Directors of Miller County* v. *Pipe Line Co.*, 292 Fed. 474.

It is inevitable, from the very fundamentals of human nature, that the assessors in a local improvement district who are themselves property owners within the district, will be generous in lightening the burdens of individual property owners and transferring them to railroad and other public utility property. It may safely be assumed that this spirit of generosity will continue, unless some authoritative rule is laid down which shall define limits beyond which this unequal distribution of burdens may not go.

The interest of the railway companies is not limited to this one proceeding. It is a matter of general knowledge that not only Arkansas but other states have embarked upon an extensive program for road improvement. However commendable this movement may be, its burdens should be distributed with some semblance of fairness and justice. In the past, unequal and discriminatory assessments have been placed upon railway property, and, in the main, they have been paid in full or paid as a result of a compromise; but the inequalities and discriminations doubtless will continue in the future unless some lawful limit shall be established. In this particular district, other public highways may be constructed or improved and further doubtful benefits be conferred upon the property of the plaintiffs. Still other improvement districts have been created in other portions of the state, as well as in adjoining states, and other highways projected and constructed. It is a subject of great importance not only to plaintiffs, but to all

common carriers located in a country in progress of development.

If the contributions to be made by common carriers to the cost of road improvements are to be limited, as near as may be, to the actual benefit or actual enhancement in value of their property within the district, it is important that reasonable rules for ascertaining such benefits should be authoritatively determined, and the present case affords justification for our request that this be done.

II.

The use by the local assessors of the State Tax Commission's assessment of plaintiffs' railroad property, which included both tangible and intangible values, as the basis for the assessment of benefits, was arbitrary and wholly unwarranted, since the value of their tangible property in the District could not be enhanced or benefited by a prospective increase in traffic.

We are not unmindful that in *Branson* v. *Bush, supra,* an assessment of benefits in a road improvement district, based upon the assessment of railroad property by the State board, was upheld against the claim that this resulted in "a higher rate of taxation," but we contend for reasons hereafter stated, that this ruling is not in conflict with the proposition above stated.

The distinction between tangible and intangible values is pointed out by this Court in *Baker* v. *Druesedow,* decided November 12, 1923, where, in approving the segregation and assessment of intangible values for purposes of general taxation, it is said:

> Intangible values of a railroad company have been declared by the highest court of the State to mean "the values of the railroad properties above

the value of its physical assets." *Missouri, Kansas & Texas Ry. Co.* v. *Shannon*, 100 Texas 379, 390. Under the statute the value of the intangible is to be determined by deducting the value of the tangible from the value of the entire railroad property.

In the Texas case cited, the court, in addition to the language quoted, adds, "intangible values ordinarily result from the profits of its business as actually conducted." The statutes of Texas there under consideration provided for the separate taxation of tangibles and intangibles, the former being determined by the county authorities and the latter by the State authorities.

The subject of intangible values was elaborately considered in *Adams Express Co.* v. *Ohio*, 166 U. S. 185. It is there said:

> Whenever separate articles of tangible property are joined together, not simply by a unity of ownership, but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property.

In *Union Tank Line* v. *Wright*, 249 U. S. 275, the court said:

> While the valuation must be just, it need not be limited to the mere worth of the articles considered separately, but may include as well "the intangible value due to what we have called the organic relation of the property in the state to the whole system."

Other states than Texas have similar provisions for the separate determination and assessment of tangible and intangible property. Intangible property is the difference between the value of property as an entirety

and the value of its physical assets. The law of Kentucky relating to this feature was before this Court in *R. R. Co.* v. *Greene*, 244 U. S. 522.

The statutes of Arkansas (section 9975, Crawford and Moses Digest of the Statutes of Arkansas, 1921), likewise provide for the taxation for general purposes of both tangible and intangible values of railroad property, as follows:

> The franchises (other than the right to be a corporation) of all railroads, express, telegraph and telephone companies are declared to be property for the purpose of taxation, and the value of such franchises shall be considered by the assessing officers when assessing the property of such corporations. In valuing for assessment purposes the property of such corporations the Arkansas Tax Commission shall determine the total value of the entire property of the corporation, tangible and intangible.

It is apparent from the above quoted statute that the State taxing officers are not only to "consider" the franchises of a railway company in making their assessments, but that they "shall" determine the total value of the entire corporation, tangible and intangible. Other provisions (sec. 9989, 9993) require this aggregate value of tangible and intangible property to be spread over the line in the State on a mileage basis; and the assessed value allocated to any county is the assessment on which taxes are levied by the local taxing officers.

It appears to be the general policy of the State to subject intangible, as well as tangible, property to taxation. Section 9965 provides for the separate assessment of the intangible property of all corporations, except public utility corporations whose property is assessed by the State Tax Commission, the purpose being, as expressly stated in the section, "to secure the assessment

of the intangible property belonging to the corporation." The State courts have approved such taxation of intangibles, as well as the rule or process by which the intangible property is separated from the tangible property. Thus, in *State* v. *Bodcaw Lumber Co.*, 128 Ark. 505, the court said:

> The statute expressly provides that intangible as well as tangible values shall be taxed, and shares of stock represent the taxable intangible value, subject to reduction to the extent of the value of the tangible property in the state which is taxed separately.

There is no provision for the assessment of intangibles in connection with farm property or other realty. Section 9919 contains the following limitation:

> Each separate parcel of real property shall be valued at its true market value in money, excluding the value of crops growing thereon.

It is entirely clear, therefore, that the State Tax Commission's assessment of plaintiffs' railroad property is an aggregate of intangible and tangible value. The laws of Arkansas do not require a separate assessment of the two classes of property, as do the statutes of some of the States. This aggregate was used by the local assessors as a basis for their assessment of benefits to the plaintiffs' property. In the assessment book (Rec. 145) the State assessment is given as the "present assessed value" of railroad and other property, as required by section 5421.

It is certain that benefits were assessed against the physical properties of plaintiffs, as well as against their intangible assets. This is so because these physical properties form a part, and probably the larger part, of the assessment made by the State Tax Commission.

It is equally certain that the only benefits claimed to accrue to plaintiffs' property were those which are supposed to arise by reason of a prospective increase in traffic. It appears from the opinions of the State courts that in their judgment an increase in traffic would bring increased profits to the railroad, and so increase its value and justify the assessment. There was no claim that the improvement of the highway would result in any direct benefit to the physical property itself.

We assume, for purposes of the argument, that an increase in traffic and a corresponding increase in profits will increase the total value of a railway property; but if so, we contend that such enhancement in value would accrue only to the intangible property, which depends upon the earning power of the corporation, and would not accrue to its physical property, consisting of rails, ties, buildings and other component parts. The value of the right of way within the district, considered as so many acres of land, would not be benefited or enhanced in value by the paving of the public highway; and the same would be true of other items of physical property within the district. It is likewise apparent that a decrease in the volume of profitable traffic would lower the earning power and the intangible value of the property, but would not affect physical values. If the railroad should "stop," as it might do in the circumstances stated in *Brooks-Scanlon Co.* v. *Railroad Commission*, 251 U. S. 396, and *Bullock* v. *Florida*, 254 U. S. 513, it is not conceivable that its physical property in the district would be enhanced in value or benefited by the construction or improvement of public highways after its operation had ceased, with no prospect of being again resumed.

The physical property of plaintiffs within the district, considered separate and apart from its earning

power or intangible values, is no more benefited by the improvement than is the Prairie Pipe Line in the district, which was assessed with benefits of $8,300 (Rec. 143), concerning which the lower court said (Rec. 308):

> They have assessed the pipe line at 50 per cent and I can't see any benefit there. If this was a suit by the pipe line, they might say, "We are not benefited by this road." The oil in the pipe, I presume, is going somewhere to be refined and there is no evidence that there is any benefit accruing to the pipe line by reason of this at all.

It is held by the Circuit Court of Appeals for the Eighth Circuit in *Board of Directors* v. *Prairie Pipe Line Co.*, 292 Fed. 474, that the construction of a levee in Miller County, Arkansas, did not benefit the property of a pipe line company. The court said (p. 479):

> We are further of the opinion that the evidence sustains the conclusion of the trial court that the improvement provided for under the acts creating the levee district did not benefit the defendant or its pipe line within the limits of the levee district. In our judgment, the evidence clearly shows that the improvement did not increase either the value of the pipe line or its earning capacity. Whether the improvement might possibly in the future decrease the expense of upkeep and repairs was shown by the evidence to depend upon so many conjectural and fortuitous circumstances as to render any such benefit purely speculative.

The physical property of the pipe line was not benefited, nor was its earning capacity increased. There was, therefore, no benefit either to its physical assets or its intangible value.

If there had been no station on the plaintiffs' line within the district, then its position with respect to benefits would have been the same as the position of the pipe

line company. The railroad and pipe line constitute property within the district, employed in the transportation of commerce across the district. The pipe line receives no benefit from the paving of the highway, perhaps for the reason that the oil being transported has neither origin nor destination within the district. If the railroad had no station within the district, how could it receive any benefit from the improvement? Its trains would pass through without stopping, and none of the commodities transported by it would have either origin or destination within the district. There would be no increase in the value of the railroad or in its earning capacity. Are its railroad tracks, side tracks and buildings enhanced in value by the mere accident of the location of the DeQueen station within the district? If the station buildings were removed to a place outside of the boundaries of the district, is it conceivable that the railroad property within the district would suffer a diminution in value to the extent of $10,635 per mile?

It is difficult to see, therefore, how the physical property of plaintiffs could be benefited by a prospective increase in traffic. If any benefit of this nature could, by any possibility, accrue to plaintiffs' property within the district, it would necessarily accrue to its earning power or intangible value, and not to its physical assets.

The local assessors, however, took the assessment made by the State Tax Commission, which included both tangible and intangible properties, and used this aggregate value in the assessment of benefits, and thereby of necessity imposed benefits upon physical property not benefited thereby. This, we contend, was arbitrary and unwarranted.

This question was not passed upon in *Branson* v. *Bush, supra.* It was not there contended that the physi-

cal property, as distinguished from the aggregate value, was exempt from the imposition of benefits received from a prospective increase in traffic. The case was submitted and decided upon the assumption that the aggregate of both tangibles and intangibles was subject to the assessment of benefits, the claim of appellant being that this created a discrimination in favor of farm property, which was assessed only at its physical value. This claim was denied by this Court on the ground that there was no "basis for assuming that the franchises of the railroad company were added as a separate personal-property value to the assessment of the real property of the company" which resulted in "a higher rate of taxation" on the property of the Railway Company than on the other property in the district.

If there had been in this case a separate assessment of tangible and intangible property, as required by the State of Texas and upheld by this Court in *Baker* v. *Druesedow, supra,* is it not clear that an assessment of benefits supposed to arise from a prospective increase in traffic, based upon the assessment of plaintiffs' physical property within the district, would have been invalid because in violation of the provisions of the Fourteenth Amendment? The fact that in the assessment by the State Tax Commission, tangibles and intangibles are not separated, but are shown in the aggregate, ought not to alter the application of the principle. If they were separated, we would know the exact amount of the property exempted from the assessment. Being stated in the aggregate, we know that a certain portion of the assessment, and doubtless the larger portion, is exempt, and that this exempt property is taxed.

III.

The assessment of benefits against the property of the plaintiffs was relatively unequal and discriminatory because not made on a uniform basis as compared with the assessment of other property, and therefore violated the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

We submit that we have shown, under propositions I and II, that the assessment of benefits against the plaintiffs was so far in excess of any possible benefits, as to be unconstitutional and void, no matter what system of assessment was used, since it is settled that an assessment which exceeds the benefits to the property, or its enhancement in value, cannot be sustained.

We shall also endeavor to show, however, that on the basis ostensibly used by the defendant, the assessments upon the property in the district were so unequal and arbitrary as to invalidate the assessment against the plaintiffs' property. It will probably be useful to summarize, briefly, the testimony as to the basis on which the assessment of benefits was made.

The three assessors, two of the three commissioners, and the engineer of the district, testified as to the method employed in making the assessment.

According to these witnesses, the assessment of property for general taxation was used as the basis for the assessment of benefits (Rec. 152, 246, 301). Farm lands and city lots were, it was said, divided into three zones; namely: zone one was the strip within one mile on each side of the highway; zone two, the strip between one and two miles from the highway; and the remainder was zone three. It was stated that there was a uniform rate applied to farm and city property in each zone, property in zone one being assessed benefits of 60 per

cent of the assessed valuation; property in zone two, 50 per cent; and property in zone three, 40 per cent. (Rec. 152, 301).

One assessor stated that they assessed as benefits *about* 60 per cent., 50 per cent. and 40 per cent. of the assessed value of farm and city property, and, as we shall show, he used the word "about" advisedly. (Rec. 246).

The assessed value of the lands, for purposes of general taxation, ostensibly include the value of any improvements, and consequently it was claimed that the board, by using this assessed value, assessed the improvements as well as the land. It was further stated that the assessed value was generally accepted by them, and no particular attention paid to improvements, unless the assessors knew that an improvement had been put on the land since the last assessment, and that then they added a little. (Rec. 31, 152, 246).

The assessors in some cases "equalized" adjoining tracts, which were of different assessed values but of the same real value, by assessing the same amount of benefits against each tract (Rec. 30), but they generally accepted the assessed value, even if it showed improved and unimproved lands, lying side by side, and of the same character, assessed at the same figure (Rec. 30, 31).

The railroad property of plaintiffs, according to the assessors, was also assessed with benefits on the basis of its assessed value for general taxation, but it is apparent that they did not apply any uniform percentage thereto. Thus, benefits in the sum of $7,000 were assessed against main track, which is 12.926 per cent of the assessed value; benefits in the sum of $5,000 were assessed against side track, which is 17.0940 per cent of the assessed value, and benefits in the sum of $9,270 were assessed against buildings, which is 19.9935 per

cent of their assessed value. The aggregate assessment of $21,270 is 16.4101 per cent of the aggregate assessed value of main track, side track and buildings. It is apparent, therefore, that benefits against railroad property were "lumped off" by the assessors, without the application of any uniform percentage or other uniform rule of apportionment.

The assessors and commissioners stated that, in their opinion, the value of the property of the plaintiffs would be indirectly increased, on account of this road improvement, by a general community benefit, which would increase the value of all the property in the district, but, on further questioning, they stated that the value of the railroad property could be increased only if the amount of traffic over the railroad was increased (Rec. 148, 150, 156, 234, 247, 280, 297, 301, 304).

The assessors and commissioners made no attempt to estimate the amount of increased traffic which they assumed would come to plaintiffs from the improvement of the highway (Rec. 236, 261, 282, 283, 297, 304, 305).

A statement of one of the assessors, which is fairly typical, is the following:

> Q. Now, what estimates or plan did you go upon to ascertain what benefits, if any, would accrue to a railroad property or the railroad property in question? A. We thought any improvement would be a benefit to all property owners in the district.
>
> * * * *
>
> Q. And believing that any improvement of this kind would be a general community benefit, that was your theory? A. Yes, sir.
>
> * * * *
>
> Q. How did you reach the conclusion that railroad property would be benefited at all? A. We thought any improvement would naturally cause more traffic over the railroad.

Q. Then you based your estimates of benefits on the assumption that there would be an increased traffic to this railroad, didn't you? A. Yes, sir.

The witness also stated that the assessors, so far as he knew, gave no consideration to the fact that the DeQueen & Eastern could haul all the products in the district from Lockesburg, and turn them over to the Kansas City Southern at DeQueen, or to the Frisco at Valliant.

Q. Do you know of any way that a highway like this could benefit the railroad property in question, except by giving it more traffic? A. No, sir.

Q. What kind of additional traffic did you estimate that this Kansas City Southern would receive? A. I don't know as we figured on any particular amount.

Q. If you did (not) figure on any amount, how could you estimate any benefit? A. Well, we knew and we all know that highways improve a country and the more it is improved the more traffic a railroad is bound to receive, and by getting more traffic it is bound to receive some benefit (Rec. 260).

The witness further stated that the assessors made no attempt to estimate the amount of increased traffic which would come to The Kansas City Southern Railway Company, or whether the increased traffic would be profitable or not (Rec. 261).

The commissioners advised the assessors how much money, approximately $550,000, it was necessary to raise, in order to improve the highway, and the assessors found the rate, divided the district into zones, and made assessments which would raise the stipulated amount (Rec. 29).

If the commissioners had advised the assessors that the improvement would cost one million dollars, instead

of five hundred thousand dollars, then the assessors would have assessed benefits in double the amount they did assess (Rec. 145).

The assessors were informed by the commissioners that there would be a bond issue of about $200,000, and that the bond people would require something like half a million assessed against the property. The assessors had to make the assessment high enough to satisfy the bond people (Rec. 259).

All the other property was assessed before the railroad property was assessed (Rec. 145).

The above was the testimony of the road district authorities regarding the manner in which the assessment was made.

The most casual inspection of the assessment roll (Rec. 36-142) shows, however, that the assessments could not have been made by assessing benefits of 60 per cent., 50 per cent. and 40 per cent. respectively, upon the assessed value for general taxation.

The first page of the assessment roll (Rec. 32) shows the following:

Owner	Zone	Acre	Assessed Value	Total Benefits	Per Cent. Benefits bear to Assessed Value	Assessed Benefits Per Acre
L. N. Howerton	.	40	120	80	66⅔	2.00
M. E. Barrow	.	40	250	100	40	2.50
P. Daniels	.	40	240	96	40	2.40
Dierks Lumber Co.	.	40	150	80	53⅓	2.00
S. G. Cecil	.	80	300	160	53⅓	2.00
Fannie Campbell	.	80	300	160	53⅓	2.00
James A. Goss	2	80	320	200	62½	2.50
W. F. Woods	.	40	260	130	50	3.25
E. Haughey	.	40	100	100	100	2.50
E. Hendricks	.	40	120	100	83⅓	2.50
E. Haughey	.	40	350	175	50	4.37½
E. Hendricks	.	40	120	100	83⅓	2.50
Thos. J. Nalley	.	40	200	100	50	2.50
Fannie Campbell	3	80	300	160	53⅓	2.00
Sarah A. Snapp	3	80	400	160	40	2.00
Sarah A. Snapp	.	80	300	200	66⅔	2.50
W. W. McReynolds	.	80	400	160	40	2.00
J. K. Barr Est.	.	160	500	360	72	2.25
James A. Goss	.	40	120	100	83⅓	2.50
J. K. Barr Est.	.	80	300	200	66⅔	2.50
Smith & Woods	.	40	100	100	100	2.50
F. D. McClanahan	.	73	350	160	45	2.20
A. K. Allison Est.	.	7	20	20	100	2.85
F. D. McClanahan	.	20	100	50	50	2.50
W. A. Keys	.	20	100	50	50	2.50
W. W. McReynolds	.	40	120	100	83⅓	2.50
W. A. Keys	.	20	90	50	55½	2.50

Attention is first called to the fact that the above assessed values were claimed to include not only the value of the land, but the value of any buildings or other improvements, and yet the average assessed value per acre, including buildings and improvements on the above properties, was only $4.13.

As will be noted further, the zones are designated in only a few instances. On the above table, there is considerable uniformity in the amounts assessed per acre, but the percentages assessed, instead of being uni-

formly 40, 50 and 60 per cent., as claimed, are 40, 45, 50, 53 1/3, 55½, 62½, 66 2/3, 72, 83 1/3 and 100.

The same per cent. was not assessed in the same zone.

Beginning on page 32 of the record, and taking the few instances where the zones are indicated, we find the following:

Owner		Zone	Acres	Ass'd. Value	Benefits	Per cent Ass'd.	Per cent should be	Rate per acre
James A. Goss	(Rec. 32)	2	80	320	200	62½	50	2.50
Fannie Campbell	do	3	80	300	160	53⅓	40	2.00
Sarah A. Snapp	do	3	80	400	160	40	40	2.00
A. J. Ballow	(Rec. 33)	1	80	400	200	50	60	2.50
H. C. Townsend	(Rec. 34)	1	25	150	75	50	60	3.00
H. C. Townsend	do	1	40	250	125	50	60	3.01
Unknown	(Rec. 35)	1	40	400	200	50	60	5.00
W. J. Williamson	(Rec. 36)	1	80	600	300	50	60	3.75
D. E. Moon	do	1	10	20	25	125	60	2.50
J. C. Thomas	do	1	30	180	100	55⅝	60	3.33
E. J. Blackburn	do	1	6	20	15	75	60	2.50
R. F. Jackson	do	2	80	440	225	51	50	2.81

The above tables seem to justify the inquiry whether the alleged percentage assessment was not an afterthought. Certainly there was neither rhyme nor reason in the application of the alleged percentages. The statute requires that the rate of assessment per acre be shown. This appears to have been done, and the figures afterward erased (Rec. 250).

There was a similar lack of uniformity in the application of the percentages of 40, 50 and 60 per cent. in the towns. For instance, the first few assessments of benefits at the top of page 95 of the record show the following:

	Present value	Total benefits	Percentage of Assessed value
Edwards, Lyda	500	300	60
C. P. Coulter	400	240	60
So. L. & T. Co.	1150	960	83
A. J. Clingan	600	600	100
A. J. Clingan	100	60	60
J. T. Henry	150	90	60
C. W. Burkhead	650	480	73
J. T. Henry	150	90	60
Mrs. L. M. Tatum	250	240	96

The assessments of benefits on all the non-railroad property in the town of DeQueen, which, judging from the map, should come in zone one, and be assessed at 60 per cent. were—upon objection being filed, and without any reason therefor being assigned, so far as the record shows—reduced 40 per cent. by the county court (Rec. 9-12, 101-127).

There were some very low assessments of benefits. For instance, on page 124 of the record, E. C. Hayes, on property of the assessed value of $250, was assessed benefits of $12.00, that is, less than 5 per cent. J. S. Whitten and Mike Cullen, on valuations of $100, were each assessed $15.00, or 15 per cent (Rec. 124).

Judging by the percentages, there were also some very high assessments of benefits. For instance, on page 116 of the record it appears that T. Landman was assessed benefits of $900.00 upon property with an assessed valuation of $200.00, in other words, 450 per cent. On page 119 of the record, it appears that Tobin Brothers and Frank Steele were each assessed benefits of 300 per cent. on the assessed value of their property; and on the same page, T. A. McKnight was assessed benefits at the rate of 720 per cent. of the assessed value.

The average assessment of benefits per acre against the farm lands was only $5.24 per acre, and the average

assessed value for taxation, including improvements, was $6.43. That is, there was a total of 64,742.93 acres of farm lands assessed with benefits, as shown by the assessment roll (Rec. 32-142). The total amount of assessed benefits against the same was $339,391, and the total assessed value, $416,463.00.

An examination of the map (Rec. 135) shows that the town of Lockesburg contains something more than 640 acres, and the total assessment of benefits amounted to $31,888. For 600 acres, this would average $53.15 per acre.

Similarly, as shown on the map (Rec. 135), the town of DeQueen occupies 1120 acres, and more than half of it is in the road district, but taking 500 acres, less than one-half of the area of the town, as being in the district, there is an average assessment of $148.71 per acre, since the total assessment of benefits in the town, exclusive of property of plaintiffs used for railroad purposes, was $74,354.40.

With this assessment of an average benefit of $5.24 per acre against the farm lands, there should be compared an assessment of $328 per acre against the 2 miles of main line of railroad belonging to the plaintiffs.

This figure is arrived at in the following manner: 2 miles of main line right of way, 100 feet wide, contain 24.28 acres of land, and the assessment of benefits against the said 2 miles of main line was $7,000.

There was also an assessment of benefits, against 9.34 miles of side track, of $5,000, and against depot buildings, roundhouse and other buildings, of $9,270.

In order to compute the acreage of the land occupied by the buildings, it is necessary to consider the manner in which railroad property is assessed for taxation in Arkansas.

We have already explained, under proposition II of this brief, that, under Section 9974 of Crawford and Moses' Digest of the Statutes of Arkansas, 1921, the Arkansas Tax Commission is required to ascertain the value of all property tangible and intangible, including the franchises (except the right to be a corporation), railroad tracks, rolling stock, water and other stations, passenger and freight depots, office furniture, other property, real and personal, owned by each railroad in the State of Arkansas.

The Tax Commission is required to determine the total value of the entire property of the corporation, tangible and intangible (Section 9975).

Each railroad company is required to file, with the Arkansas Tax Commission, a schedule showing the length of the main line and the length of all the side tracks, switches and turnouts in each county in which the railroad may be located, and each city or town in said county through or in which the railroad may run; also the depots, sectionhouses, roundhouses, machine shops, water tanks, coal chutes and all other buildings and fixtures of every kind used for railroad purposes, and the counties, school districts and towns in which located; also materials, supplies, etc. (Section 9982).

The schedule is required to show, in detail, the true value of the several items listed and also the aggregate value of the whole railroad, taking into consideration the entire right of way as given by the charter of the company or statutes of the state, the franchises, privileges and everything of any character whatever situated upon the right of way of the railroad connected with or appertaining to it in any way which adds to its earning power or gives the railroad value as an entire going thing (Section 9984).

The Commission is required to determine the value, per mile, of main track, the value, per mile, of the side tracks, turnouts and the value of each building, and the section continues with the provisions as to personal property (Section 9987).

The buildings and side tracks of railroads are required to be assessed as real estate, and each building or side track is to be assessed in the incorporated town or district where it is located. The main track is also to be assessed as real estate and it is to be apportioned for assessment and taxation between the several towns and school districts through which the railroad runs according to the actual mileage in each town and district (Section 9989).

It is further provided that all real estate, including buildings and structures thereon, other than that used for railroad purposes, shall be listed and assessed by the assessor in the county where situated at the same time and in the same manner as real estate belonging to individuals is required to be listed and assessed (Section 9990).

Except for the side tracks and buildings, the value of which is to be allocated to the county or town in which located, and the rolling stock, tools and supplies, which are not important here, the entire value of the railroad, tangible and intangible, is divided between the several counties and other taxing sub-divisions on the basis of the main line mileage located in each county or subdivision (Rec. 166-167, 175-176).

The method of assessment is explained as follows in the case of *St. Louis-San Francisco Ry. Co.* v. *Sebastian Bridge District*, 293 Fed. 729, which was also a case involving an assessment of benefits from the construction of a public improvement in the State of Arkansas. The court said:

The third point is that a portion of this property has been subjected to double assessment. The portion intended is a part of a tract in section 9, consisting of 14.68 acres. In making up their assessment list, these assessors included and separately treated and valued ten items: Main line, side track, buildings on right of way and seven separately described pieces of real estate. The above acreage in section 9 was one of these items and the assessment thereon was $2,800. The claim made is that 10.60 acres of the 14.68 acres was also included in the right of way items. In determining the value of the railway property, the assessors took the valuation found by the state tax commission. The state statutes (Crawford & Moses' Digest, Secs. 9974, 9982, 9984, 9986, 9987, 9989 and 9990) require that all property used for railway purposes be assessed, for general taxation, by the commission and that property not so used be assessed locally. Therefore when these assessors took the valuations of the commission, they had the value of all property within the district used for railway purposes. If any part of the above acreage was included therein, then the second inclusion in this acreage item would be duplicated valuation to that extent. Right of way as well as all manner of railway building and yards are included within the above statutes and, therefore, within the valuation of the commission. Also, section 4003 of the same statutes, a portion of the Act on Eminent Domain, declares that:

"The words 'right of way', as used in this act, shall be construed to mean and include all grounds necessary for sidetracks, turnouts, depots, workshops, water stations and other necessary buildings."

The description of properties in the above sections relating to the commission and the argumentative force of the statutory definition of right of way in the eminent domain statute convince that all land used in connection with railway purposes is included in the valuation made by the Commission.

St. L., I. M. & S. R. Co. v. *Miller County*, 67 Ark. 498, 55 S. W. 926. The evidence shows that of this tract of 14.68 acres, 10.60 acres were used as terminal yards containing roundhouse, machine shop, turntable, material storage yards and terminal trackage. This portion was plainly covered by the commission's valuation and should have been excluded from this acreage. This deduction would leave that item as 4.08 acres with assessment of $778.27.

An examination of the assessment roll (Rec. 7-8, 141) shows that in addition to the benefits assessed against the plaintiffs and which are complained of in this suit, there were also other assessments of benefits against lands of the plaintiffs. Property described by lot and block is set forth on pages 7 and 8 of the record and there follow descriptions of property as follows:

NW¼ NE¼ West of Railroad in 19-8-31;
A strip 200 ft. along R. R. in 19-8-31;
SW¼ NE¼ West of K. C. S. Ry. in 19-8-31;
Right of Way of K. C. S. Ry.;
W. 935 ft. of SE¼ except R. of W. 19-8-31.

The acreage of these lands, except the lands described by lot and block, is shown on page 141 of the record, respectively as 16 acres, 6 acres, 24 acres, 5 acres, and 45.40 acres, a total of 96.40 acres. On page 141, the last named tract is described as "W. 935 ft. of SE¼ except 100 ft. R. of W. heretofore named."

Evidently there was a double assessment in assessing the above right of way, since its value was included in the assessment of main line mileage complained of in this case. It is apparent also that the taxing authorities gave a very narrow construction to the term "right of way," as not including the yards and division terminals of the plaintiffs. After such lands had been in-

cluded in the State Tax Commission's assessment in the value of main track, the local assessor again added these lands to the tax roll for purposes of local assessment, resulting in a double assessment for general taxation purposes, and also for the purpose of the assessment of benefits in this case.

In view of this situation, we submit that it would be entirely fair to consider, as a part of the assessment of benefits against the main track, the assessments against the side tracks which were really, in large part, yard tracks of this division terminal and the assessment against the buildings. The total assessment against main track, side tracks and buildings was $21,270, and computed on the above basis, would show an assessment per acre of $876.

If this is not correct, certainly these buildings did not occupy more than 10 acres of land in all, and this would result in an assessment of $927 per acre, since the total assessment of benefits against the buildings was $9270. We do not have the figures as to the acreage of the lands occupied by the side tracks.

Considered simply as land, without regard to the use to which it was being put, the land of the railway companies could only be increased in value, through the general development of the community, to the same extent and in the same manner as the adjoining property of other owners, and yet, as we have shown above, the assessment of benefits against plaintiffs' main line right of way was at the rate of $328 per acre, and, against the adjoining farm land, at an average of $5.24 per acre.

This assessment of benefits against plaintiffs' main line right of way is also to be compared with an assessment of benefits in the town of Lockesburg of $53 per acre, and in the town of DeQueen of $148 per acre. As stated above, the assessment of benefits against the

buildings was at the rate of not less than $927 per acre, and if the benefits assessed against the buildings and side tracks are included in the main line assessment, such assessment amounts to $876 per acre.

Judged as a conventional assessment of benefits, there was gross discrimination against the plaintiffs in assessing their main line property through the country at $328 per acre, as compared with an average assessment of $5.24 per acre against the farm lands, and a similar discrimination in the town.

It will probably be contended, however, that the assessments of benefits were all made by applying certain percentages against the assessed values for general taxation, non-railroad property being assessed 60, 50 or 40 per cent. of the valuation for general taxation, depending on its distance from the highway, and the railroad property of plaintiffs being assessed benefits on an average of only about 16.40 per cent of the assessed value for general taxation.

As shown above, the assessed value of the farm lands averaged $6.43 per acre, and the assessed benefits averaged $5.24 per acre.

The assessed value for general taxation ostensibly included all improvements (Rec. 152). The district is an old, long-settled district (Rec. 242), and the lands have been under cultivation for years (Rec. 291). Obviously, if the country is worth constructing hard surfaced roads in at all, these farm lands have been ridiculously undervalued. One of the assessors testified that the farm lands were worth $25 to $50 per acre (Rec. 277). He testified that all property was assessed for taxation at 50 per cent., but that the real value of some of it was a great deal higher (Rec. 258). A witness for plaintiffs testified, without contradiction, that railroad

property was assessed much higher, relatively, than other property (Rec. 178).

An illustration was given, by one of the assessors, of a farm of 80 acres, with a two-story frame building on it, which was assessed, for general taxation, at $410. Obviously, this was only a fraction of the value of the land, to say nothing of the value of the building. The assessors showed what a farce this method of assessment was by assessing, against this property, benefits of $800, practically 200 per cent. of the assessed valuation (Rec. 274).

One tract of 40 acres, with no buildings on it, belonging to assessor Grady, which may fairly be said to be worth, according to Grady's testimony, at least $50 per acre, was assessed for general taxation at $7.50 per acre; that is, 15 per cent. of its value (Rec. 253).

It is clear that little or no attention was paid to improvements, in making the assessments for general taxation, on the non-railroad property.

As shown by the assessment roll (Rec. 32-144):

Of the 1485 tracts of 10 acres or more,

115	were assessed at	$2.50	per acre,
60	were assessed at	3.00	per acre,
49	were assessed at	3.75	per acre,
81	were assessed at	4.00	per acre,
376	were assessed at	5.00	per acre,
33	were assessed at	6.00	per acre,
51	were assessed at	6.25	per acre,
76	were assessed at	7.50	per acre,
139	were assessed at	10.00	per acre,

All of the above are even figures.

144 tracts were assessed at irregular figures under $5.00 per acre.

143 tracts were assessed at irregular figures under $10.00 per acre.

We find in the well-settled district here under consideration, that tracts of 10 acres or more are commonly assessed from $2.50 to $10 per acre—the majority at $5 per acre—although their market value is at least $25 to $50 per acre. It appears that although the assessors testified that they distinguished between improved and unimproved property in the district, no such distinction was in fact made, because the great bulk of the property in tracts of 10 acres or more was assessed at uniform values of $2.50, $3, $3.75, $5, $7.50 and $10 per acre, which conclusively refutes any contention that the improvements on such property were taken into consideration in assessing the value of such properties.

An inspection of the assessment roll, in this case, further shows that, of 1533 parcels, whose acreage is given, 1439 parcels were assessed benefits ranging from 50 cents to $10 per acre.

But against the plaintiffs, benefits were assessed (Rec. 144) as follows:

	Mileage	Present assessed value	Corrected and assessed benefits
Main tracks	2 miles	$ 54,000	$ 7,000
Side tracks	9 ¾ "	29,250	5,000
Buildings		46,365	9,270
Totals		$129,615	$21,270

We have shown that this resulted in an assessment of several hundred dollars per acre.

The assessment of benefits held void in the case of *Missouri Pacific R. Co.* v. *Road Improvement District No. 1, of Hot Springs County, Arkansas* (C. C. A., 8th Ct.), 288 Fed. 502, bears such a close resemblance to the case under consideration that we feel justified in quoting at length from it. The court said:

The method pursued is shown in exhibit found in the record and here copied, in so far as it relates to section 1 of the road:

"Re-assessment of Railroads in Hot Springs County Road Improvement District No. 1.
Missouri Pacific Railroad Company.

Road	Section	Miles	Zone	County and State Assessed Value	Total Benefits
No. 1	Main track	8	1-2-3	$240,000.00	$14,400.00
	Side track	5.26	1	15,780.00	1,893.60
	Buildings		1	7,120.00	854.40

It is similar in form as to other sections of road, and discloses a variation in per cent. of levy on main track, side tracks and buildings. Special assessments on the basis of benefits rest upon the assumption that the property on which the assessments are made will be enhanced in value, and that the enhancement will fairly equal the assessment it is made to bear. The Act was framed upon that assumption, and the commissioners were empowered to enforce its purpose; but they did not do so; they adopted the assessed valuation as a basis. It is our opinion that in pursuing that method all of their assessments were void. The error came about, we think, by misapplication of the provisions of section 8 of the Act, which we presently consider.

It is urged by appellees that there is no ground for complaint on account of the method of assessment adopted by the board because, it is claimed, farm lands within the district were assessed benefits of 24% of their assessed value for general taxation, while appellant's property was assessed not more than 6 to 12% of its assessed value. But additional facts show there is no merit in this contention, because, from the uncontradicted testimony appellant's property was assessed at a higher per cent. of its value for general taxation than was other property in the district. The proof is that apellant's property was assessed at least 60% of its value. One of the commissioners testified that farm lands in the district were in his judgment assessed as

high as 50% of their value. Two other witnesses, both familiar with land values in Hot Springs County and residents there, testified that farm lands were assessed at not exceeding 25% of their value. One of them was in the real estate business and had loaned a great deal of money on lands in the county. The other had been county clerk and also county judge of the county. Another witness in the employ of appellant testified that he had made an investigation as to the value of lands in that county, and that in his opinion they were taxed at not more than 15% of their value. Appellant's property is assessed for general taxation by state officers, farm lands and town lots by county officers. On this it seems clear that the assessed valuation for general taxation could under no condition be considered a fair basis and safe guide for an equitable and just distribution of these special assessments. The basis used by the commissioners was not only not permissible under the Act, it was also arbitrary, inequitable and grossly unjust. This conclusion is forcibly demonstrated in another way. Appellant's right of way within the district on which its main track, side tracks and buildings are located contains about 500 acres. The benefits assessed against it, figured on this basis, would be a little more than $200 per acre. The uncontradicted proof discloses that farm lands lying along its right of way are assessed total benefits of $2.40 per acre. It is no answer to this unjust and unequal distribution of burdens to say that the farm lands were assessed a benefit of 24% of their assessed value ($10 per acre) for general taxation, while appellant's property was only assessed an average of less than 10% of its assessed value. This resulted in burdening appellant's property for the improvement more than eighty times as much as that placed on farm lands, when the two classes of property are considered as acreage. The result, we thing, demonstrates that the action of the commissioners was "palpably arbitrary and a plain abuse," and violative of the Fourteenth Amendment.

It will be noted that it was proved that the railroad company's property involved in the above case, which was assessed at a value of $30,000 per mile of main track for the purpose of general taxation, was assessed at at least 60 per cent. of its value. The testimony as to the percentage of the true value of the farm lands, which was assessed for purposes of general taxation, varied from 15 per cent. to 50 per cent.

The case of *Thomas* v. *The Kansas City Southern Ry. Co.*, 277 Fed. 708, 261 U. S. 481, involved an assessment of benefits from the construction of a drainage ditch in this same county of Sevier. In that case it was testified that the lands in the drainage district were worth $8.00 to $40.00 per acre and that their value would be more than doubled by the construction of the drainage ditch.

It is evident that, in road district No. 3, while railroad property was assessed for taxation at 50 per cent or more of its true value, farm property was grossly under-assessed, and improved property with buildings on it was generally assessed on substantially the same basis as unimproved property.

The great majority were assessed benefits at 50 cents to $10 per acre. On the other hand, the main line of plaintiffs was assessed benefits at $328 per acre, and property occupied by buildings at $978 per acre.

Furthermore, as stated above, the assessments of benefits on the lots in DeQueen were reduced 40 per cent., thereby increasing the discrimination against plaintiffs, since a corresponding reduction in the assessment against plaintiffs' railroad property in the city of DeQueen was not made. This was a direct damage to plaintiffs since each year, a sufficient levy is made to raise the total sum needed by the road district. Any under assessment or reduction in the assessment of bene-

fits against other property, increases the amount plaintiffs must pay.

No benefits were assessed against property belonging to churches, the county, school districts or cities. (Rec. 34, 42, 54, 70 *et seq.*).

This was held to invalidate such an assessment in the case of *Missouri Pacific* v. *Road Imp. Dist.*, 288 Fed. 502, but it is relatively unimportant.

The method of taxation used by defendants in this case is discriminatory because the railroad property is assessed at a much higher value than is the non-railroad property in the district; because the value of the improvements on the main line right of way are included in the valuation upon which the tax is assessed, when such improvements are only occasionally considered as to non-railroad property, and because there is added thereto a large assessment on account of side tracks and buildings. It is true that in this case there was a claim that the benefits assessed against the property other than railroad property, were based upon the valuation for general taxing purposes, but, as we have shown, this rule was more honored in the breach than in the observance; and the assessment of lands for general taxing purposes was so low as to make it out of proportion with the value fixed upon railroad property.

The result is the same in principle as that reached in the case of *Kansas City Southern Railway Company* v. *Road Improvement District No. 6, of Little River County, Arkansas*, 256 U. S. 660, which was reversed by this Court on the ground that the assessment was so palpably discriminatory and arbitrary as to amount to a denial of the equal protection of the law. The position taken by this Court in that case is, as we see it, equally con-

trolling in this case. It was there said of this same Arkansas statute:

> The statute under consideration prescribes no definite standard for determining benefits from proposed improvements. The assesors made estimates as to farm lands and town lots according to area and position, and wholly without regard to their value, improvements thereon, or their present or prospective use. On the other hand, disregarding both area and position, they undertook to estimate benefits to the property of plaintiffs in error without disclosing any basis therefor, but apparently according to some vague speculation as to present worth and possible future increased receipts from freight and passengers which would enhance its value, considered as a component part of the system.
>
> Obviously, the railroad companies have not been treated like individual owners, and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law. Benefits from local improvements must be estimated upon contiguous property according to some standard which will probably produce approximately correct general results. To say that 9.7 miles of railroad in a purely farming section, treated as an aliquot part of the whole system, will receive benefits amounting to $67,900 from the construction of 11.2 miles of gravel road seems wholly improbable, if not impossible. Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case. *F. S. Royster Guano Co.* v. *Virginia*, 253 U. S. 412, 416, 62 L. ed. 989, 990, 40 Sup. Ct. Rep. 560. It is doubtful whether any very substantial appreciation in value of the railroad property within the district will result from the improvements; and very clearly it cannot be taxed upon some fanciful view of future earnings and distributed values, while all other property is assessed solely according to area and position. Railroad property may not be burdened for local improvements upon a basis so wholly different

from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all.

In *Thomas* v. *Kansas City Southern Ry. Co.*, 277 Fed. 708, 712, an assessment made by a drainage district was set aside as being arbitrary and unjust. In discussing the assessment the court said:

> The basis of valuation here employed for benefits is the valuation of all property within the district for general taxation. General taxation and assessments for special benefits are essentially different in their basic characteristics and their legal theories. One is grounded upon the idea that all property should bear a proportion based upon value of the burden of general taxation; the other is grounded upon the idea that property actually benefited by a public improvement should respond in proportion to the benefit so received. Obviously, any connection between the value of a given piece of property for general taxation and its value for benefit assessment taxation is purely accidental.

On this proposition we say that if the assessment was, in fact, on the basis of area and location, as it appears to have been, the plaintiffs' property was grossly overassessed, as shown by the above figures.

If the assessment was on the basis of the assessed value for taxation (and we do not admit that that would form the proper basis for the assessment of benefits in any case), the record shows that non-railroad property was systematically so undervalued, as compared with railroad property, that it could not produce substantially correct results. Furthermore, as we have shown, the announced rules for making the assessment were constantly departed from.

This assessment offends against the rules stated in the following cases:

In *Thornton* v. *Road Imp. Dist.*, 291 Fed. 527, it was said of a road district in which no benefits were assessed against a considerable amount of real estate within the district:

> Nor could this disproportionate, clearly excessive, and arbitrary assessment and taxation stand if the statutes of Arkansas had authorized or permitted the assessors or commissioners to make a just, fair, and equitable assessment upon and taxation all the property benefited, or if this court is mistaken in its interpretation of the statutes and they did empower those officers to make such an assessment and taxation. And that because those officers have made and the defendants are proceeding to enforce this disproportionate, arbitrary, and excessive assessment and taxation, and—
>
> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 361, 369, 373, 374, 6 Sup. Ct. 1064, 1073 (30 L. Ed. 220).

In *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20, it was said:

> Assessing the franchises and other property of certain corporations at a different rate and by a different method from that employed for other corporations of the same class for the same year, which results in enormous disparity and discrimination, denies the due process of law and equal protection of the laws protected by U. S. Const., 14th Amend. against impairment by a State.

In *Royster Guano Co.* v. *Virginia*, 253 U. S. 412, it was said:

> It is unnecessary to say that the "equal protection of the laws" required by the Fourteenth Amendment does not prevent the states from resorting to classification for the purposes of legislation. . . . But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

In *Gast Realty & Inv. Co.* v. *Schneider*, 240 U. S. 55, it was said:

> The legislature may create taxing districts to meet the expense of local improvements, and may fix the basis of taxation without encountering the 14th Amendment unless its action is palpably arbitrary or a plain abuse. *Houck* v. *Little River Drainage Dist.*, 239 U. S. 254, 262, 60 L. Ed. 526, 36 Sup. Ct. Rep. 58. The front-foot rule has been sanctioned for the cost of paving a street. In such a case it is not likely that the cost will exceed the benefit, and the law does not attempt an imaginary exactness, or go beyond the reasonable probabilities. . . .
>
> But, as is implied by *Houck* v. *Little River Drainage Dist.*, if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact. *Martin* v. *District of Columbia*, 205 U. S. 135, 139, 51 L. Ed. 743, 744, 27 Sup. Ct. Rep. 440.

The assessment of benefits, in this case, was entirely arbitrary, and not calculated to produce substantially correct results. The assessors stated that the only benefit to plaintiffs' property must be such as resulted from

increased earnings, but their percentage bore no relation to any estimate of increased earnings. As the record shows, the percentage might as well have been 5 per cent. or 25 per cent., or 75 per cent., and, no doubt, would have been any of those amounts, if needed to produce the balance required by the commissioners.

There was included an assessment of $9,270 against buildings. These buildings were treated separately for purposes of local taxation. We question seriously, even aside from what is said in propositions I and II, and which contain our view of the matter, whether buildings can ever be said to have their value enhanced by a public improvement. The value of a building is its cost of replacement. The land may be enhanced in value, or, more correctly, the earning power of the property may be enhanced in value, but the value of the buildings is not enhanced; and, for the same reason, the value of the so-called side-tracks was not enhanced, and they should not have been included.

But to conclude on this point, the Supreme Court of Arkansas stated that the railroad property "was assessed at the actual benefits." As agreed by the assessors and commissioners, the only benefits the railroad companies could receive, must be through increased earnings. The district was, therefore, required to adopt some method which was reasonably calculated to ascertain the amount of increased earnings and enhancement of value therefrom. Since it did not do this, and chose an arbitrary amount, with no basis whatever except that some such percentage had been chosen in other road districts (Rec. 146, 148-150), and which resulted in an excessive assessment of benefits, the assessment was unconstitutional and void.

IV.

The special act of the Legislature of Arkansas which attempted to validate and confirm the assessment of benefits as made by the Road Improvement District, could not cure the defects in the assessment.

After the assessment was made by Road Improvement District No. 3, a special act of the legislature of Arkansas was passed, which attempted to validate and confirm the assessment of benefits as made. Any such act could not, however, validate an assessment that is repugnant to the provisions of the Constitution. In the case of *Thibault* v. *McHaney*, 119 Ark. 188, the Supreme Court of Arkansas said:

> Where the uncontroverted facts show, as they do here, that the estimated cost of the improvement contemplated, exceeds the benefits to be derived therefrom, an Act of the legislature validating an assessment for such improvement would be arbitrary and unconstitutional.
>
> *Peavy* v. *City of Little Rock*, 32 Ark. 31;
> *Coffman* v. *St. Francis Drainage Dist.*, 83 Ark. 54;
> *Kirst* v. *Street Imp. Dist.*, 86 Ark. 1.

In *Thornton* v. *Road Improvement District No.* 1, 291 Fed. 518, 527, an assessment of an Arkansas Road district was annulled. It was sought in that case to uphold the assessment because the assessment had been approved by subsequent acts of the legislature. In disposing of this contention the court said:

> "But this is a grossly disproportionate, arbitrary and excessive assessment of benefits, and the taxation based upon it does not constitute that due process of law without which the constitution of the United States prohibits the taxing of the property of the owner without compensation for public use, and no approving acts or fiats of the legislature of a state enacted without notice to the owners of the

property and without opportunity to be heard by any tribunal upon the merits of the issue, could constitute such assessments and such taxation, or the act or acts which approved them, due process of law, or relieve the assessment and taxation from the grossly disproportionate, arbitrary and excessive character which brings them under the ban of the fourteenth amendment to the constitution."

In *Road Improvement District No. 2* v. *Missouri Pacific Railroad Company*, 275 Fed. 600, 607, it was sought to uphold an arbitrary assessment because it had been approved by the legislature of the state. In denying this contention, the court said:

"But in the case in hand the legislature did not undertake itself to make the assessment on the property in this district, but it delegated that power to and imposed that duty upon the board of the district. And when the legislature delegates to a board or to commissioners the determination of the question what lands will be benefited or what the amount of benefits to such lands will be, the inquiry is in its nature, judicial, in such a sense that property owners are entitled to a hearing or an opportunity to be heard after notice before these questions are determined."

Thomas v. *Kansas City Southern Ry. Co.*, 261 U. S. 481, 43 Sup. Ct. 440;

Houck v. *Little River Drainage District*, 239 U. S. 254.

For the above reasons, the decision in this case should be reversed.

Respectfully submitted,

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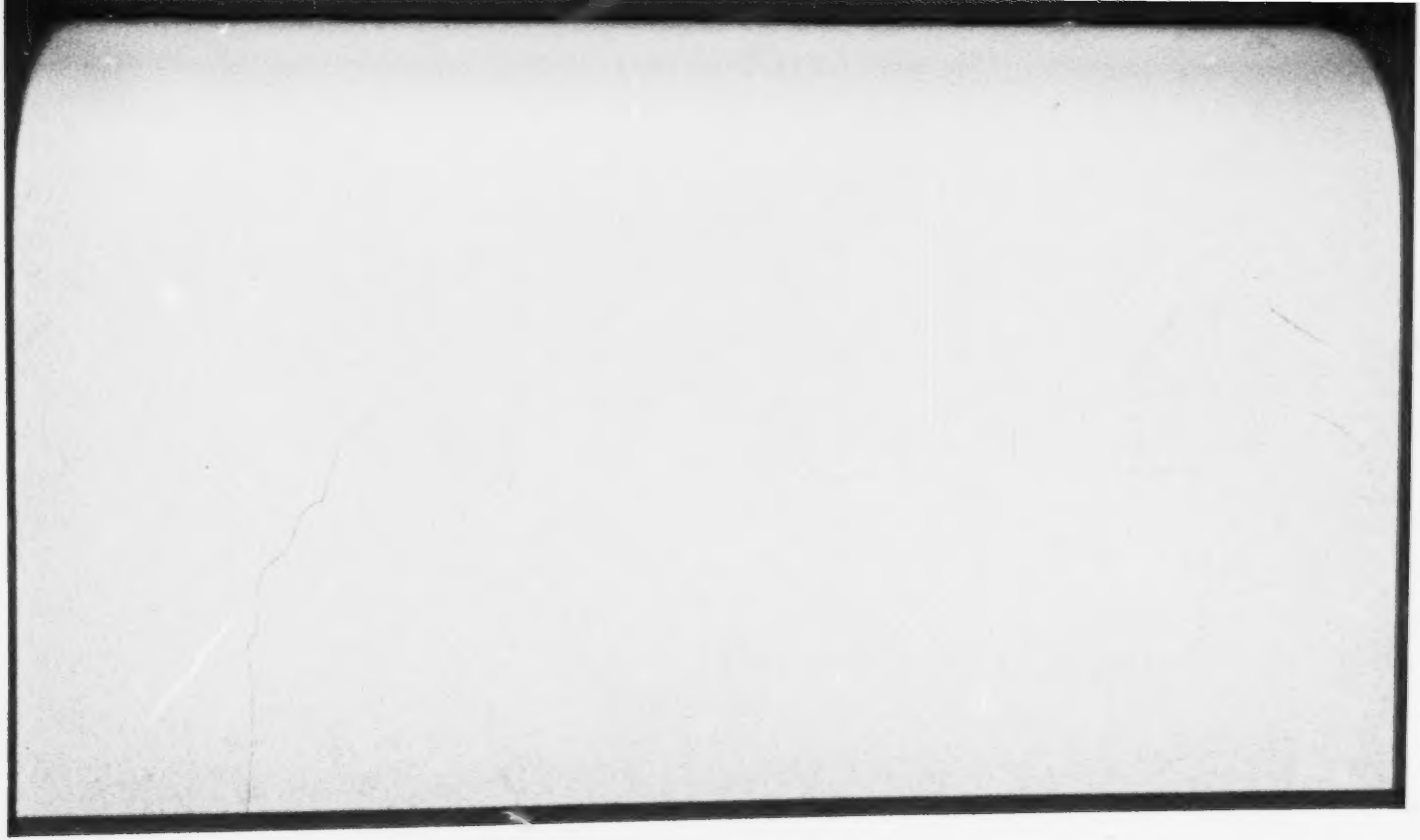

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. ~~283~~ 33

THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND TEXARKANA AND FORT SMITH RAILWAY COMPANY, *Plaintiffs in Error*,

vs.

ROAD IMPROVEMENT DISTRICT No. 3 OF SEVIER COUNTY, ARKANSAS, ET AL., *Defendants in Error*.

In Error and on Writ of Certiorari to the Supreme Court of the State of Arkansas.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

IN THE

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OCTOBER TERM, 1923.

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THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND TEXARKANA AND FORT SMITH RAILWAY COMPANY,
Plaintiffs in Error,

vs.

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Defendants in Error.

In Error and on Writ of Certiorari to the Supreme Court of the State of Arkansas.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

SOME CORRECTIONS AND EXPLANATIONS OF STATEMENTS IN BRIEF OF DEFENDANTS IN ERROR.

1. On pages 34 *et seq.* of their brief, defendants in error, herein called defendants, refer to our statement that the value of some of the property of plaintiffs was included twice, on the assessment roll, and that, thereby, two assessments of benefits were imposed on it.

We gave, as an illustration, the assessment, on page 141 of the record, of benefits of $50.00 against right of way belonging to plaintiffs, although the value of such right of way was also included in the value of main track, and there assessed benefits. We referred to this right of way because it was clearly so described in the record, and there could be no dispute that the value of this land was included twice.

As a matter of fact, however, all of the land owned by plaintiffs in Road District No. 3 was included in the valuation of main track of $27,000 per mile, and a large part of it was then assessed additional benefits, as property not used for railroad purposes (Rec. 141). As stated in the testimony (Rec. 166-167, 175-176), the entire value of the railroad, tangible and intangible, after the deduction of the value of the side tracks, buildings, rolling stock, and materials and stores, is included in the value of the main track. The value of the land is therefore included in the value of main track, but it was again spread on the assessment roll and assessed benefits on page 141 of the record. We referred, in our original brief, to an identical case of double assessment in *St. Louis-San Francisco Ry. Co.* v. *Sebastian Bridge District*, 293 Fed. 729.

Defendants cite the case of *Southern Railroad Company* v. *Watts*, 260 U. S. 519, in support of the proposition that double taxation by a state does not violate the Fourteenth Amendment.

The rule is stated as follows in the case of *Fort Smith Lumber Company* v. *Arkansas*, 251 U. S. 532, where the court said:

> The Fourteenth Amendment no more forbids double taxation than it does doubling the amount

of the tax; short of confiscation or proceedings unconstitutional on other grounds.

It is recognized, however, that double taxation is, as a general rule, unjust, and it is not to be presumed that it was intended unless it is a necessary result of the provisions of the law. It usually arises where different taxing schemes over-lap.

In the case of *Tennessee* v. *Whitworth*, 117 U. S. 129, it was said:

> In corporations four elements of taxable value are sometimes found: 1, franchises; 2, capital stock in the hands of the corporation; 3, corporate property; and 4, shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall as far as is practicable be laid equally on all; and if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect, but if they do it is because the Legislature has unmistakably so enacted. All presumptions are against such an imposition.

In the case of *Buck* v. *Beach*, 206 U. S. 392, the court said:

> Our decision in this case has no tendency to aid the owner of taxable property in an effort to avoid or evade proper and legitimate taxation. . . . . It does, however, tend to prevent the taxation in one state of property in the shape of debts not existing there, and which, if so taxed,

> would make double taxation almost sure, which is certainly not to be desired, and ought, whenever possible, to be prevented.

Furthermore, we did not refer to this as double taxation, and we do not think it is properly so termed. We said there was a double assessment. There were not two independent taxes, or proceedings for the assessment of benefits, but the same assessment of benefits was imposed twice upon some of the property. There was included the value of more property than plaintiffs owned, since some of it was included twice. To the extent that such property was included a second time, there was no such property, and it was clearly a taking of property without due process of law to assess benefits against plaintiffs on property which did not exist.

It also denied plaintiffs the equal protection of the law.

2. On pages 28 and 29 of their brief, defendants call attention to our statement that the assessments, shown on page 32 of the record, were at the rate of $4.13 per acre, and say:

> It is very misleading to select one page of the assessment record and strike an average of the assessed value per acre for the purpose of trying to show that the acreage property of the district is very much under-valued.

A reading of our original brief will show, however, that we did not use the figure complained of, which appears on page 36 of our brief, for purposes of general comparison. On the contrary, we used, for this purpose, the average benefits and average assessed value, per acre, of all the farm, or rather, acreage, property in the district. On page 38, of our brief, we said:

The average assessment of benefits per acre against the farm lands was only $5.24 per acre, and the average assessed value for taxation, including improvements, was $6.43. That is, there was a total of 64,742.93 acres of farm lands assessed with benefits, as shown by the assessment roll (Rec. 32-142). The total amount of assessed benefits against the same was $339,391, and the total assessed value, $416,463.00.

3. On page 33 of defendants' brief, they state that:

Plaintiffs' property being located in DeQueen should be assessed on the same basis as the other lots in the town are assessed.

A reference to the map (Rec. 164), and to the assessment roll (Rec. 32-144) shows that plaintiffs are assessed benefits upon property both within and without the city limits of DeQueen, and that they own acreage property as well as town lots and blocks. Consequently, the comparison of the assessment against plaintiffs' property, out in the country, should be with the average assessment of benefits against the farm property, and the comparison in DeQueen should be with acreage property, as well as platted property.

Defendants say, on page 33 of their brief, that "counsel are in error in assuming that all the area within the corporate limits of DeQueen and Lockesburg is platted property."

We made no such assumption. We took, in DeQueen for example, the entire area, in acres, of the district within DeQueen, and divided it into the total assessed benefits.

Since receiving the brief of defendants, we have rechecked our computations. The map (Rec. 164) shows that the District occupies, in the town of DeQueen, more

than half of Section 30 (320 acres and more); more than half of the S½ of Section 19 (160 acres and more); the W½ of the SW¼ of Section 20 (80 acres), and the W½ of the NW¼ of Section 29 (80 acres), a total of more than 640 acres.

Any acreage property in the District, within the city limits of DeQueen, is located in Section 30, the S½ of Section 19, the W½ of the SW¼ of Section 20, and the W½ of the NW¼ of Section 29.

We have accordingly, had prepared a statement showing the total amount of benefits assessed against the acreage property, within the city limits of DeQueen, and have added the total assessment of benefits against the platted property in DeQueen, the latter appearing on Pages 101 to 127, inclusive, of the record. This statement shows:

Rec.	Owner	Description	Area	Benefit
128.	O'Connor, D. E.	Pt. SW SE 30-8-31	1.5	$ 66.66
	Gradin, H. M.	" NE NE "	2.0	62.50
	Spence, John	" NE SE "	1.0	50.00
	Fowler, W. M.	" SE "	.5	50.00
	C. P. Service Co.	" NW SE "	2.0	12.50
	Thomason, Jno.	" SW "	1.0	50.00
	Griffin, E. E.	" "	4.0	18.75
	Sorrells, J. K.	"	.3	33.33
	Selph, Carl	"	3.7	20.30
Rec.	Dierks L. & C. Co.	NE NE "	40.0	1,200.00
129.	" " " " "	N½ SE NE "	20.0	600.00
	" " " " "	S½ NE SE "	20.0	1,800.00
	" " " " "	NW NE E-KCS "	30.0	180.00
	" " " " "	SW NE " "	13.5	120.00
	C. W. P. S. Co.	NW NW SE " "	10.0	6,000.00
	Province G. S.	SW NW SE " "	2.5	120.00
	Locks, C. B.	S½ NW SE " "	12.0	480.00
	Thomas, W. F.	SW SE " "	9.0	60.00
	Payne, B. F.	SE SE Ex 4 ac. NE Co. "	34.0	480.00
	Good, Clara A.	NE Cor. SE SE "	4.0	300.00
	KCS & T&FS	W 935 ft. SE¼ Ex 100' R/W "	45.40	960.00
	Hartly & Thomas	E½ N½ NW SW 20-8-31	15.00	200.00
	Bush, J. F.	W½ N½ NW SW "	5.00	25.00
	Harben, J. H.	SW NW SW "	10.00	500.00
	Unknown	SE NW SW "	10.00	150.00
	Reese, D. D.	SW SW SW "	10.00	400.00
Rec.	Shepard, J. C.	W½ NW SW SW "	5.00	125.00
142.	Brown, C. P. Est.	E½ NW SW SW "	5.00	50.00
	Garrison, W. D. Est.	N½ E½ SW SW "	15.00	150.00
		Total acreage property	331.40	$14,264.04
		Total platted property		74,354.40
		Total assessment of benefits in DeQueen		$88,618.44

Our estimate, given above, shows that there are considerably more than 640 acres, in the District, which are within the city limits of DeQueen. In order to cover the land assessed against plaintiffs as railroad property, and city streets and alleys, we have deducted

140 acres, leaving 500 acres as the area on which to average the above assessment of benefits of $88,618.44. This would give an average assessment of benefits, per acre, of $177.24. The estimate of 500 acres would seem to be sufficiently low, for the reason, as shown in the above statement, that there are 45.45 acres of unplatted land, and also several blocks, or parts of blocks, belonging to plaintiffs (Rec. 7-8), which are assessed as non-railroad property.

This assessment of benefits should be compared with an assessment against plaintiffs' main line right of way of $328.00 per acre (See page 39 of our original brief).

Or, if we assume that, in the whole District, there are 50 acres occupied by main line right of way, side tracks and buildings (in addition to the 100 acres assessed benefits as non-railroad property, that is, the 96.40 acres described on page 43 of our original brief, plus the acreage of the town lots described on pages 7 and 8 of the record), the total assessed benefits of $21,270.00 will amount to $425.40 per acre, as compared with an average assessment of benefits against acreage property of $5.24 per acre, and against property in the town of DeQueen of $177.24 per acre.

4. But we do not wish to obscure, by laborious comparisons of this kind, our real contentions in the case. We submit that this assessment of benefits, upon the basis of the assessed value, is an entirely improper method, and illegal, for the following reasons:

(a) No assessment of benefits which exceeds the actual benefits to property from a public improvement is valid. We showed, under Proposition I of our original brief, that the assessment of benefits against the property of plaintiffs was far in excess of the amount

of benefits, if any, which could possibly accrue to the plaintiffs from the construction of Road No. 3.

(b) Any method for the assessment of benefits must be calculated to produce reasonably correct results. The assessors claimed that they assessed both the town property, and the acreage property, at certain percentages of their assessed value for general taxation, but, as shown in our original brief, these percentages were not uniformly, or even generally, applied. We also showed that a great deal of the property in the District is very much under-assessed in value, so that it cannot be taken as the correct measure either of the true value of the property in the District, or as the measure of the relative value of the different classes of property. This demonstrated, in our opinion, that, even if the assessed value for purposes of general taxation may properly be used, in some cases, for the assessment of benefits, the assessment roll, here under consideration, is so faulty and unequal that it cannot be properly used in assessing benefits since there is no reason to think that its use will produce a reasonably uniform and correct assessment of benefits.

We submit that what was said in the case of *Gast Realty & Investment Company* v. *Schneider Granite Company*, 240 U. S. 55, applies here. In that case, the court said:

> The defendants' case is not an incidental result of a rule that, as a whole and on the average, may be expected to work well, but of an ordinance that is a farrago of irrational irregularities throughout.

5. In our opinion, also, the only correct method of assessing benefits is by a computation of the actual benefits in a manner similar to that set forth in Proposition I, of our original brief. If the property of the Dis-

trict were all devoted to one class of business, and the improvements on the land were of the same general character and relative value, probably some mechanical form of assessment would not produce very much injustice. As a matter of fact, however, the benefit from an improvement of this kind does not vary in substantially exact ratio to the value of the real estate and improvements thereon, which is the necessary assumption of the assessors in using the rule for the assessment of benefits which they claim to have used. Take a sawmill, for instance, which has an industry track at the mill, the logs being brought in by rail, and the finished lumber being shipped out by rail. The value of the property of the sawmill would be many times that of the ordinary farm occupying the same acreage of land, and, yet, the sawmill would not be benefited any more, and probably not as much, as would the farm. The assessment of benefits against the sawmill property, however, under this rule of using the assessed value for general taxation, would be much greater than against the farm. Other industries, such as mines and factories, served by railroad tracks, or so situated that they would not use in their operations the highway which was being improved, will readily suggest themselves.

The fact that the use of the assessed value for general taxation is not necessarily, or even presumptively correct, is recognized in the following cases, which were cited in our original brief:

Thomas v. *Kansas City Southern Railway Company*, 277 Fed. 708, 712.

Missouri Pacific R. Co. v. *Road Improvement District No.* 1, 288 Fed. 502.

Assessments for general taxation, and assessments of benefits resulting from public improvements, are on

entirely different bases. This court, in the case of *Commissioners of Road Improvement District No.* 2 v. *St. Louis S. W. R. Co.*, 257 U. S. 547, said:

> Assessments for benefits and damages are different in their essential characteristics, from those for general taxation. *Paving District* v. *Sisters of Mercy*, 86 Ark. 109, 109 S. W., 1165, 15 Ann Cases, 347.

The burden of proof appears to have been upon the Road District. *Commissioners of Road Improvement District No.* 2 v. *St. Louis S. W. R. Co.*, 257 U. S. 547, 559.

6. Defendants, on page 33 of their brief, assumed that city blocks are only 200 feet in length and width, giving an area of a little less than an acre to the block. Obviously, these would be unusually small blocks, and defendants' assumption would appear to be clearly erroneous, at least as to some of the blocks. Some of the blocks in Lockesburg contain 26 and 38 lots, respectively (Rec. 100). Assuming that each lot has a frontage of 25 feet, these blocks would have a length of 325 feet and 475 feet, respectively. Likewise, in DeQueen, there are blocks containing 20 and 24 lots, respectively (Rec. 7-104-106). With a frontage of 25 feet per lot, these blocks would have a length, respectively, of 250 and 300 feet. A block 300 feet square would contain 90,000 square feet, something more than two acres, since an acre has an area of 43,560 square feet.

7. Defendants say, on pages 6 and 7 of their brief, that the tonnage of plaintiffs has increased. As we read the record, there is no testimony to the effect that the total tonnage received by the plaintiffs, from this Road District 3, or from the construction of this highway, has increased. There was no testimony as to the total ton-

nage, and it was stated that, to a very considerable extent, there was simply a substitution of one crop for another (Rec. 285-296).

8. Defendants, on pages 21 and 22 of their brief, attempt to minimize the amount of the assessment which must be paid by the plaintiffs under the present assessment. They state that the assessment against the plaintiffs will probably not exceed $200.00 a year, since it is expected that the revenues from a license tax on motor vehicles and a tax on gasoline and oil will be applied on the expenses of this, and the other road districts in Sevier County. This is no justification for an arbitrary and excessive assessments of benefits. Moreover, we are very doubtful whether defendants' pleasant prophecy will be realized. The annual assessment against plaintiffs, in 1920, on account of this Road District, was $744.45, being 3½ per cent of the total benefits of $21,270, assessed against plaintiffs' so-called railroad property (Rec. 298). It is our experience that these road districts more often over-expend, rather than under-expend.

Respectfully submitted,

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WM. R. STANSB
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No. ~~269~~. 33

In the Supreme Court of the United States

October Term, 1923.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY and THE TEXARKANA & FORT SMITH RAILWAY COMPANY,

vs.

ROAD IMPROVEMENT DISTRICT NO. 3 OF SEVIER COUNTY, ARKANSAS ET AL.

In Error and on Writ of Certiorari to the Supreme Court of the State of Arkansas.

BRIEF OF DEFENDANTS IN ERROR.

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vs.

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In Error and on Writ of Certiorari to the Supreme Court of the State of Arkansas.

BRIEF OF DEFENDANTS IN ERROR.

No. 269.

STATEMENT.

The defendant Road Improvement District No. 3 of Sevier County, Arkansas, was organized on petition of the land owners of the district, under the general statutes of the state, for the purpose

of making a hard surfaced highway of the public road beginning at the depot of the Kansas City Southern Railway in DeQueen, and extending east to the boundary of the county, a distance of about 18 miles. The railway runs north and south through the county. The board of assessors of the district adopted the zone system, except as to the railroad property, which was assessed at the actual benefits, according to the judgment of the assessors. The assessed property of plaintiffs consists of two miles of main line of the railroad, which was assessed for general taxation purposes at $54,000, and the benefits were assessed at $7,000, or $3,500 per mile; also nine and three-fourths miles of sidetracks, assessed for general taxation purposes at $29,250, and the benefits assessed at $5,000; also depot buildings and other buildings, assessed for general taxation purposes at $46,365, the benefits being assessed at $9,270, the total assessment being $21,270 against plaintiffs' property. The total benefit assessment of the district is $510,033 (Rec. 144).

The total assessment for general taxation purposes of town lots and acreage property of the district is $897,660.00 and the total benefits assessed against such property is $488,763, or an average rate of 54½ per cent. The total assessed value for general taxation purposes of plaintiffs' property in the district is $129,615 and the assessed benefits $21,270, or approximately 16 per cent of its assessed value. The total assessed value for taxation purposes of the property of the DeQueen & Eastern Railroad in the district is

$93,790 and the benefits assessed against such property are $29,720, or approximately 31½ per cent of its assessed value and almost twice the rate assessed against plaintiffs' property. For the purpose of trying to make the assessments for general purposes uniform and equal, the State Tax Commission assessed plaintiffs' property at fifty per cent of its value, therefore, the benefit assessment against it is only 8 per cent of its actual value.

The assessment was filed with the County Court and plaintiffs resisted their assessment on the ground that no benefits would accrue to the railroad property from the construction of the improvement. The County Court approved the assessment and plaintiffs appealed to the Circuit Court where there was a trial *de novo* and the assessment sustained. Plaintiffs appealed to the State Supreme Court where the judgment of the Circuit Court was affirmed (Opinion Rec. 311) (*K. C. S. Ry.* v. *Rd. Imp. Dist. 3, Sevier County*, 156 Ark. 116).

After the benefit assessment was filed in the County Court the General Assembly of the state enacted a statute expressly approving and confirming the assessments on file (Act No. 98 of the extraordinary session of the General Assembly, approved February 7, 1920).

I.

Plaintiffs' Property Is Benefited by the Improvement of the Highway.

The record shows that the Kansas City Southern Railway extends from Kansas City to Port Arthur, running north and south through Sevier County and the defendant District; that the only other railroads in the county are the DeQueen & Eastern, which begins at DeQueen and runs east to a point a short distance beyond the boundary of the county, and the Texas, Oklahoma and Eastern, which begins at DeQueen and runs west to Valliant on a branch of the Frisco in southwest Oklahoma. DeQueen and Horatio, on the Kansas City Southern and Lockesburg on the DeQueen and Eastern are the principal shipping points in Sevier County; that Nashville is about 20 miles east of Lockesburg and is on a branch of the Missouri Pacific Railroad. The Kansas City Southern is known as "straight as the crow flies route" to the northern markets. It is the beneficiary of the increased traffic by reason of the highway improvement. All products shipped from the defendant District reach this railroad and are transported to Kansas City, Chicago and the other markets. If the products are hauled to DeQueen or Horatio the K. C. S. becomes the initial carrier. If products are hauled to Lockesburg they are delivered to the DeQueen and Eastern to be transferred to the K. C. S. Previous to the improvement of the highway some of the products of the district were hauled to Nashville and were shipped over the Missouri Pacific. Since the im-

provement the farmers in the eastern portion of Sevier County and the western part of Howard County take their products to Lockesburg where they are received by the DeQueen & Eastern and transferred at DeQueen to the K. C. S.

Learned counsel for plaintiffs argue that products of the district may ultimately reach the K. C. S. at DeQueen, or they may be transported over the Texas, Oklahoma & Eastern to a point on the Frisco. There is no "may or ultimately" about it. The record shows that they are transported over the K. C. S. Of course they could go west from DeQueen to a branch of the Frisco at a point further from the markets than DeQueen and would eventually reach their destination at Chicago, Kansas City, Pittsburg and other places. Counsel had as well argue that some day airships may be the means of transporting perishable fruit and vegetables and that therefore the plaintiffs will not be benefited by the increased traffic resulting from the improved highway.

T. W. Park, who had been sales agent for three years for the Lockesburg Berry & Truck Association, testified:

> "Q. Have you ever made a shipment of any of those products that were not routed over the Kansas City Southern one way or the other from DeQueen? A. I never have routed a car another way.
>
> Q. Will it ever be practical with the railroad facilities now in the county to ship and deliver the products in that community over any other route? A. Not for me; the Kansas City Southern gives me the quickest service—

quicker deliveries—and on perishable products there must be a quick delivery.

Q. And for that reason it wouldn't be practical for you to ship perishable products over any other route except the Kansas City Southern? A. No, sir" (Record 286).

Counsel for plaintiffs also argue that products of the district may move eastward to the town of Nashville and be shipped over the Missouri Pacific. The evidence shows that by reason of the improvement of the highway the farmers in the western part of Howard County are bringing their products to Lockesburg for shipment instead of Nashville as they did prior to the improvement (Rec. 290). The plaintiff is not only benefited by receiving increased shipments from the farmers of the district but receiving for shipment products from another county by reason of the improvement. We submit that positive proof of what has occurred should have more weight than supposition of counsel as to what might occur.

The record shows that the district is rapidly developing as the result of the building of the road; that the farmers are abandoning cotton and corn as crops and are growing the more profitable crops of cantaloupes, watermelons, berries, fruit and vegetables of all kinds; that the improvement of the highway affords the farmers facilities for getting these products to points of shipment in marketable condition; that by reason of this, the tonnage of plaintiffs has increased and will continue to increase, by shipment of products not

only from the district, but adjacent territory; that prior to the improvement it was almost impossible on account of the bad roads to engage in truck farming with profit. That the eastern terminus of the highway reaches the timber belt and makes it profitable and practical to move timber, staves, ties and lumber to plaintiffs' railroad. In the face of this evidence counsel argue that plaintiffs are not benefited by the improvement. It would be as reasonable to argue that the territory through which the railroad runs was not benefited by the building of the railroad. In calculating the increased receipts for shipments by reason of the improvement, counsel limits it to amounts received on some carload shipments of fruit and vegetables. At page 18 of their brief they give figures showing the amount of such shipments received at DeQueen and at DeQueen from the DeQueen & Eastern for the years 1915-18-20 and it will be noted that although the highway was only partially completed in 1920, the receipts for carload shipments for that year were approximately three times as much as for either year before the beginning of the improvement. The mere beginning of the improvement inaugurated a new era among the farmers and increased the carload shipments of fruits and vegetables two hundred per cent the first year.

In estimating the increased freight receipts that will accrue by reason of this hard surfaced road being constructed, eighteen miles at right angles to plaintiffs' railroad, counsel for plaintiffs did not take into consideration the increased tonnage of

many products of the territory and ignored entirely the vast amount of timber products made available for shipment from the virgin forests adjacent to east end of the road. They also fail to consider the increased amount of incoming traffic. People buy in proportion to their ability to pay and the incoming freight will increase in proportion to the outgoing freight.

At page five of their brief, counsel say that: "It was also testified that in this region hard surfaced roads paralleling the plaintiffs' line had taken away the local business of plaintiffs, which now moved by motor trucks, and that roads running at right angles to plaintiffs' line, such as road Number 3, would by connecting up with cross-roads, enable the trucks to reach more towns, and further decrease the local business of the railroad." We can understand that a hard surfaced road leading from some distributing point or where there are wholesale houses and running parallel with a railroad would take away some traffic from the road by reason of trucks moving the freight to other points on the railroad, but this would only apply to merchandise and not products of the territory. However, as the road in the instant case does not parallel plaintiffs' railroad, the evidence as to such roads is not applicable. We are unable to understand what produce or freight of any description would move by truck over road Number 3 and thereby deprive the plaintiffs of hauling it. The road runs east from DeQueen at right angles to the railroad and if a truck with freight traveled it to a cross road and reached

other towns they would not be points on the railroad. If trucks haul freight it will be freight that has been hauled in by the railroad and will be hauled to points not reached by the railroad. If trucks haul the products of the territory it will be to the railroad and cannot be in competition with it. These railroad experts have a set formulae by which they undertake to tell how improved highways injure the railroads and apply to it every case where they resist railroad assessments regardless of the physical facts connected with the particular case. In this connection it is well to note that only one of plaintiffs' witnesses resided in Sevier County or had ever lived there. Only one had ever been over the district. They are not familiar with the roads, the territory, the products of the country or the general conditions, or changes in conditions; they simply said that in their opinion the building of the highway would not increase the traffic and that the railroad property would not be benefited. Not one of them knew anything of the relative assessments of the property of the district. Not one could say that the railroad property was assessed higher than other property in the district, or that in making the assessment of benefits the railroad company had been discriminated against. They did not have the knowledge, nor the means of obtaining the knowledge, possessed by the witnesses for defendant, all of whom were business and professional men who had spent practically all their lives in Sevier County and were familiar with the roads and the conditions generally in the county and district.

The three assessors of the district testified that plaintiffs' property would receive benefits equal to the assessment against it. Four other witnesses testified the same. Dr. Norwood, who lives at Lockesburg and has practiced medicine throughout the district for more than twenty-five years, testified that the benefits assessed would accrue to plaintiffs' property by reason of the plaintiffs' community interests, by increasing the traffic or tonnage of plaintiffs' road and by increased valuation of plaintiffs' property. He gave the details upon which he based his statements, showing that although the road at that time had been graded but not completed, he had observed an increase in the products of the territory and observed that people who formerly hauled their produce to Nashville on the Missouri Pacific Railroad and did their trading in Nashville, were then making Lockesburg their trading and shipping point by reason of the improvement of the highway. He explained that before the improvement of the highway that at some seasons of the year, there were portions of the eastern end of it that a team could not pull an empty wagon; that it was not possible to get over the road between DeQueen and Lockesburg with a loaded truck and not practical to travel it with an automobile or truck. He testified that his office building was assessed for general taxation purposes at $3,000.00, being about 50 per cent of what it cost him in 1913, and that the defendant district assessment against it was $1,800.00; that his residence was built thirty-five years ago and is worth between fifteen hundred

and two thousand dollars; that the general assessment against it is $750.00 and the defendant district assessment $540.00. (Rec. 280-1.)

T. M. Gallaher (Rec. 296-7), T. W. Park (Rec. 285-95) and E. S. Byington (229-45) all corroborated the testimony of the assessors as to the benefit to plaintiffs' property by the improvement of the highway and gave their reasons for their evidence.

The Circuit Court that tried this cause on appeal from the County Court in summing up the evidence said: *"The witnesses for the railroad have gone very far in their statements that it would not benefit them any at all; and the testimony of the other witnesses, on the other hand, shows that there is considerable benefit. One witness stated there had been an increase of a hundred carloads of stuff in one season by virtue of this road; that some of those ran from $200 to $1.000 a car. A hundred carloads of stuff being brought to the railroad, ranging from two hundred to a thousand dollars a carload, it seems to me, controverts very strongly the testimony on the part of the railroad company that they are getting nothing." The court, addressing its remarks to counsel for plaintiffs said further: "The only fault to be found is that they have assessed other property at a greater value in proportion than they have your property. They have made an average assessment of other taxable property at 54 per cent; they have assessed yours at sixteen and a fourth per cent."* (Rec. 307-8.)

Mr. Chief Justice McCulloch, in rendering the opinion of the Supreme Court of Arkansas in this case, said: *"The testimony introduced on behalf of the district is that there will be great benefits accruing to the railroad property from the construction of the improvement, as the improved road will be a feeder to the railroad and will considerably enhance its business by the development of the contiguous and outlying territory. It is not a case of a parallel road, but one which runs out into territory which will afford access to the railroad property and augment its business. We have decided that in assessing benefits to a railroad from building a hard surfaced road, the Legislature may consider the benefit resulting from the development of the territory.* (*Hines* v. *Road Improvement District,* 145 Ark. 382.) *The Supreme Court of the United States, in Branson* v. *Bush,* 251 U. S. 182, *made the same declaration. It was said in that case that it is obvious that anything that develops the territory which the railroad serves must necessarily be a benefit to it, and that no agency for such development equals that of good roads.'* (Rec. 313.)

The commissioners and assessors of the defendant district and numerous witnesses testified that the property of the plaintiffs would be benefited as much as the assessment. The County Court, State Circuit Court and the State Supreme Court upheld the assessment. This Honorable Court says that necessarily a good road develops a territory and is a benefit to a railroad that serves the territory, but plaintiffs witnesses were of the opinion that good roads are not beneficial to rail-

roads but are very detrimental. Counsel for plaintiff take a more liberal view of the matter and after assuming certain amounts for the purpose of their calculation, insist that the total net earnings of the plaintiffs by reason of the improvement, assignable to the mileage in the district, will be sixty-two cents a year. If the contention by plaintiffs that good roads are detrimental to railroads, then, we submit, that the Federal Government is doing the railroads a great injustice by spending $75,000,000 a year for the improvement of roads.

II.

The Assessment Is Not so Plainly Arbitrary, and so Grossly Excessive as to Amount to Confiscation of the Property of the Plaintiffs.

Under the heading that the assessment is arbitrary and confiscatory, plaintiffs make the same error as they did in their statement of the case, by taking the position that some of the increased tonnage of the district may go from DeQueen to Valliant, Oklahoma, and from Valliant to Hugo, on the main line of the Frisco, and finally reach its destination. Plaintiffs have argued that the increased tonnage will be shipments of the products of what is called "truck farming," and there is no proof that such shipments have ever been routed via Valliant and Hugo. Plaintiffs interrogated witness Byington on this points as follows:

> "Q. The products that are brought in over this highway then may be delivered to the line

of road running west from the town of DeQueen, connecting at Valliant with the Frisco, and carried thence to the Northern markets? A. In a round about way, yes.

Q. But they can be? A. Yes, sir, you could ship stuff via New York to San Francisco, too, if you wanted it." (Rec. 232.)

This reply of the witness illustrated the absurdity of plaintiffs position that some of the "truck" would go via Valliant.

Plaintiffs argue further that any increase in traffic will be shared by the Missouri Pacific receiving the freight at Nashville. We have already shown that the improvement of the road in the defendant district has diverted to the plaintiffs' railroad tonnage that formerly went to the Missouri Pacific at Nashville.

In sustaining the assessment involved in the case of *Branson* v. *Bush,* this court said: *"For the district, three witnesses were called, one a doctor, one a merchant, and one a long-time resident of the village of Alma. Each of these testified that in his opinion, the road by making the village of Alma, more accessible, particularly in the wet season of the year, and by developing the adjacent country, would increase the business of the railway company, and would divert business from Van Buren, where there was a competing railroad, to Alma, where appellee had the only line."* In the instant case the proof shows that traffic has been diverted from Nashville to DeQueen via Lockesburg, where the plaintiffs have the only railroad that is a direct line to the markets.

Plaintiffs characterize the assessment as a "gross and glaring injustice" which they say come within the rule of *Kansas City Southern Railway Company* v. *Improvement District,* 256 U. S. 648, *Norwood* v. *Baker,* 172 U. S. 269 and other cases cited. With the exception of the first one, these same cases were cited and relied upon by the railroad in the case of *Branson* v. *Bush,* and were there reviewed, this court holding that they were not in conflict with the rule as laid down in the *Branson* v. *Bush* case.

The first case cited by plaintiffs, *Kansas City Southern Railway Co.* v. *Road Improvement District,* 256 U. S. 648 (case originating in Little River County, Arkansas), is not analogous. In that case the benefits assessed against the acreage property were a uniform assessment per acre, no value given to improvements; here in assessing the acreage property its value as fixed for general taxation purposes, including the improvements, were considered. In the Little River County case the benefits assessed against the town lots were uniform assessments per front foot, without giving any consideration to the location or value of the lots or the improvements thereon; here the benefits are assessed according to assessments made for county and state purposes, location, value and the improvements thereon considered. There the road to be improved was 11 miles long, running parallel with the railroad; here the road is 18 miles running at right angles. There the assessment was $67,900.00; here it is $21,270.00. There the assessment was $7,000.00

per mile, main line; here it is $3,500.00. There the only property of the railroad in the district was nine miles of main line; here there are two miles of main line, nine miles of side track, round house and other buildings of the freight division, with a total general assessment, upon a 50 per cent basis, amounting to $129,765.00 with an actual value of $259,530.00. The facts are so entirely different in the two cases that there is no similarity at all.

Plaintiffs say that the law gave the assessors no standard by which to proceed, except to assess against the property an amount equal to what such property would be benefited. We submit that if the assessors adopted a standard which produced *"approximately correct results"* it is immaterial that the law failed to lay down any "iron rules" for their guidance. Counsel say that the law did not direct that an assessment be made on area basis or an assessment basis. We submit that an area basis for railroad property would not produce a proper assessment and certainly plaintiffs cannot complain that the benefit assessment against it is not the same as the assessment against it for general taxation. If it was, the assessment would be $129,765.00 instead of $21,270.00. Counsel say that the law did not direct an assessment of benefits against the railroad property in accordance with enhanced values arising from the increased traffic caused by the improvement. We submit that the record shows that everything was considered that counsel contend should have been, therefore, plaintiffs are not prejudiced by the fact that the law did not lay down specific rules.

In the case of *Branson* v. *Bush,* the assessment involved was made by the special Act that created the district and made the benefit assessment against the property of the district the same as the county and state assessment. If the district in the instant case had been created by special Act and the same basis adopted for the benefit assessment, the assessment against plaintiffs would be $129,-765.00, more than six times as much as that fixed by the assessors of the district. Yet counsel say that "it is inevitable from the very fundamentals of human nature that the assessors in a local improvement district who are themselves property owners within the district, will be generous in lightening the burdens of the individual property owners and transferring them to railroad and other public utility property." We submit that the accusation is not applicable to the assessors of the defendant district who fixed the assessment at one-sixth of what it would have been if it had been originally made by the legislature on the same basis as was made in the district involved in the case of *Branson* v. *Bush.* Counsel do not suggest who should fix benefit assessments. Naturally if they are fixed by a board they should be men who are familiar with the local conditions and, therefore, would be residents of the district.

The Fourteenth Amendment Was Not Intended to Compel the States to Adopt an Iron Rule of Equal Taxation.

In the case of *Branson* v. *Bush, supra*, this court said: *"No attempt was made to prove fraudulent or capricious or arbitrary action on the part of any officials in making the assessment, the only evidence on the subject being the opinion of four employees of the Company that the improvement of the road would not benefit the railroad property, and if inequality has resulted from the application of the state law in a customary manner to a situation frequently arising in our country, it is an incidental inequality, resulting from a valid classification of railroad property for taxation purposes, which does not fall within the scope of the Fourteenth Amendment, which was not intended to compel the states to adopt an iron rule of equal taxation."* Citing the following cases:

Bell's Gap R. Co. v. *Pennsylvania*, 134 U. S. 232.
French v. *Barber Asphalt Paving Co.*, 181 U. S. 324.
Cass Farm Co. v. *Detroit*, 181 U. S. 396.
Detroit v. *Parker*, 181 U. S. 399.

There is no more proof in the instant case of fraudulent capricious or arbitrary action than was in the case of *Branson* v. *Bush*. It is true that some of the employees of plaintiff testified that the railroad would not be benefited by the improvement but we submit that *"testimony can have no force when it is in direct confict with the physical*

facts and to believe it would involve an absurdity in reason and common experience."

Waters-Pierce Oil Company v. *Knisel,* 79 Ark. 608.

"A highway is an improvement justifying a local assessment against a railroad."

St. Louis & S. F. R. Co. v. *Ft. Smith & V. B. Bridge District,* 113 Ark. 493.
Missouri P. R. Co. v. *Conway County Bridge Dist.,* 134 Ark. 292.
Oates v. *Cypress Creek Drainage Dist.,* 135 Ark. 449.
Missouri Pacific R. Co. v. *Monroe County Imp. Dist.,* 137 Ark. 568.

The Federal Supreme Court will not interfere with improvement district assessments on constitutional grounds where the state authorities have upheld the assessments, and the action of the state authorities cannot be said to be arbitrary or wholly unequal in operation and effect.

Goldsmith v. *Prendegrast Constr. Co.,* 252 U. S. 12.
Withnell v. *Ruecking Constr. Co.,* 249 U. S. 63.

Counsel for plaintiffs complain because the assessors in making the benefit assessments against the acreage property, generally accepted the general assessment as the value of the property, without giving consideration to the improvements, unless the assessors knew that the improvements had been put on the land since the last assessment. We

submit that the assessors were correct in this, because the law requires the county tax assessor, when assessing property for state and county taxation, to add to the value of every tract of real estate the value of the improvements made thereon since the previous assessment. The assessors of the defendant district were right in assuming that all improvements had already been considered by the county assessor in his assessment and therefore did right not to consider improvements separately, unless they knew that such improvements had been made after the last assessment by the county assessor. Any other procedure would have been erroneous.

Counsel, at pages 33-34 of their brief, set out part of the evidence of one of the assessors to the effect that benefits were estimated upon the assumption that there would be increase of traffic to the railroad of plaintiffs by reason of the improvement. We submit that this was a reasonable and logical presumption.

"The value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated."

R. R. Company v. *Backus*, 154 U. S. 439.

As a reason for contending that there can be but little prospective development of the territory and resulting profits to plaintiffs, counsel at page 4, say that "the district has been settled many years, and a large part of the available land is already in cultivation." In concluding their argu-

ment on their first assignment of error, they say, at page 22, that "It is a subject of great importance not only to the plaintiffs but to all common carriers located in a country in the *progress of development.*" From these conflicting statements we are unable to understand just what is the opinion of counsel regarding this territory. The truth is that while the country around DeQueen and Lockesburg is settled, there are probably not a dozen houses in view of the road on a ten-mile stretch of it between the two towns.

There is nothing alarming about this matter and no probability that any railroad property is going to be confiscated by existing or prospective improvement districts. It is true, as stated on page 2 of plaintiffs' brief, that the estimated cost of the improvement was $200,000 and the total assessed benefits are $510,033, but the property of the district will never pay any more than the cost of the improvement and the interest on the bonds. If the assessment of benefits was a million dollars it would not cost the taxpayers any more. The tax levy is based on the total assessment and the more the assessment the less the per cent levied. Since this cause has been pending the General Assembly of Arkansas, at an extraordinary session, enacted a statute providing for a comprehensive system of constructing state highways and for paying part of the bonded indebtedness incurred by improvement districts for the construction of roads. (Act No. 55—Approved October 10, 1923.)

The statute provides for certain motor vehicle license and levies a tax on gasoline and oil, all of

the funds to be used for highway purposes. It appropriates $3,000,000.00 annually to be apportioned to the several counties according to population. The counties are classified and in some of the counties all of the funds will be used toward paying the existing bonded indebtedness of the road improvement districts. In Sevier County, where the defendant district is located, all of the funds apportioned to it will be applied to the existing debts of the road improvement district, including the debts of the defendant district. In some of the counties a certain per cent will be applied to existing indebtedness and the balance to construction of new roads. The Act further provides that hereafter no road improvement district shall undertake the improvement of roads where more than 50 per cent of the construction cost shall be collected from taxes on the property of the district. When we consider that Sevier County's part of the three million dollars annually, is going to pay a large portion of the indebtedness of the defendant district, and the further fact that the benefit assessment against plaintiffs was a pro rata part of an assessment far in excess of the cost of the improvement and that even without state aid to the district, plaintiffs would never have been required to pay the full amount of the assessment but only its actual pro rata part of the indebtedness, we can see that the amount that plaintiffs will contribute will not be very much and not burdensome when distributed over a period of twenty years. Probably not $200.00 a year. Of course, this remedial highway legislation of the state is no reason why

the assessment against plaintiffs should be sustained and no reason why it should be reduced, because, regardless of the future state aid toward the liquidation of the highway indebtedness, the present assessment against plaintiffs should stand in order that they may pay their pro rata part of whatever must be collected from the property of the district. The matter will adjust itself by reduced percentage that is levied from year to year upon the assessments.

Plaintiffs, at page 22 of their brief, say that "Not only Arkansas but other states have embarked upon an extensive program for road improvement," and then counsel sent out an S. O. S. call for the relief of railroads from what may happen by excessive assessments made by improvement districts. It is in answer to that statement that we have called attention to the recently adopted program for highways upon which Arkansas has embarked and to show that it is an entirely different program to that previously followed and that any fear of the dire anticipated calamity that may befall railroads from highway taxes has been eliminated by the new system established. We are not mentioning the new system by way of apology for the old system but to allay the fears of counsel for plaintiffs for what they predict may happen under a system that has been practically abolished. Since the state has created a new source of highway revenue and provided that the state shall construct new highways and maintain those already built and pay part of the indebtedness now existing against the road improvement districts, it is

not likely that any more road improvement districts will be created, even to pay one-half the cost of such improvement.

III.

The Use by the Local Assessors of the State Tax Commission's Assessment of Plaintiffs' Railroad Property, as the Basis for the Assessment of Benefits, Was Not Arbitrary and Wrong, but Fair and Just and Absolutely in Accord with the Decision in the Case of Branson v. Bush, 251 U. S. 181.

Plaintiffs' second assignment of error is that the value of the tangible property of plaintiffs in the district could not be benefited by a prospective increase in traffic and, therefore, the use by the assessors of the State Tax Commission's assessment of plaintiffs' railroad property, which included both tangible and intangible values, as the basis for the assessment of benefits, was arbitrary and wholly unwarranted.

In arriving at the benefits to assess, the district assessors took into consideration the value of all property as fixed for general taxation. Where the property had been assessed by the county assessor, such assessment was considered. The State Tax Commission having assessed the tracks and buildings of plaintiffs, this assessment was taken as the value of such property.

The assessment involved in the case of *Branson* v. *Bush, Supra,* was made by the Legislature and

the benefit assessment against the railroad property was fixed absolutely the same as the assessment against such property as fixed by the State Tax Commission. If the Legislature had the right to adopt such assessment as the benefit assessment then the assessors of the defendant district had the right to consider the same kind of an assessment in arriving at the value of plaintiffs' property.

In the case of *Branson* v. *Bush,* Supra, the court said:

> "If, however, the distinction sometimes taken between the 'essential properties of corporate existence' and the franchise of a corporation (*Memphis & L. R. R. Co.* v. *Railroad Comr.,* 112 U. S. 609) be considered substantial enough to be of practical value, and if it be assumed that the distinction was applied by the state commission in making the assessment involved, this would result, not in adding personal property value to the value of the real estate of the company in the district, but simply in determining what the value of the real estate property was, its right of way, tracks and buildings, having regard to the use which is made of it as an instrumentality for earning money in the conduct of railroad operations. This, at most, is no more than giving to the real property a value greater as a part of a railroad unit and a going concern than it would have if considered only as a quantity of land, buildings and tracks. This is the method of assessing railroad property often approved by this court, specifically in *Cleveland C. C. & St. L. R. Co.* v. *Bacus,* 154 U. S. 139. 'The rule of property taxation is that the value of the property is the basis of taxation. It

does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property, but rests solely upon the value. But the value of the property results solely from the use to which it is put, and varies with the profitableness of that use, present and prospective, actual and anticipated. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the use to which it is put. In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much to another. And long experience has confirmed the statement by Mr. Justice Miller in State Railroad cases, 92 U. S. 575, that 'it may well be doubted whether any better mode of determining the value of that portion of the track within one county has been devised than to ascertain the value of the whole road, and apportion the value within the county by its relative length to the whole.' And see Kentucky Railroad cases, 115 U. S. 321, in which, also, the contention is disposed of that the railroad track should be valued by the same officials and on the same basis of acreage and farm lands adjacent to it. Thus, the assessment complained of was made under valid laws and in a manner approved and customary in arriving at the value of that part of the railroad tracks situate in a state, county, or district. So far as this record shows, the assessment modified by the decree of the District Court, not appealed from, is not a composite of real and personal property values, but it is the ascer-

> tained value of the real estate—the tracks and buildings— of the company within the taxing district, enhanced, no doubt, by the special use made of it, but still its value as a part of the railroad unit, resulting from the inherent nature of the business in which it is employed—a value which will not be resolved into its constituent elements for the purpose of defeating contribution to a public improvement."

Plaintiffs' second assignment of error raises absolutely the same question that was decided in the foregoing opinion and we deem further reference to it unnecessary.

IV.

The Assessment of Benefits Against the Property of Plaintiffs Is Not Relatively Unequal and Discriminatory Because Not Made on a Uniform Basis as Compared with the Assessment of Other Property.

Plaintiffs under their third assignment of error, argue first that the district assessors did not consider improvements on town lots and acreage property unless the improvements had been made since the last assessment of the property. We have already explained that every year the county assessor adds to the value of each tract the value of the improvements made since the prior annual assessment, and it was for this reason that the district assessors did not consider improvements

that were made prior to the annual assessment by the county assessor.

Complaint is also made that the benefit assessment against plaintiffs' main track is 12 per cent of the assessed value, 17 per cent against side tracks and 19 per cent against buildings or an average of 16 per cent. We submit that this is wholly immaterial. Plaintiffs will not pay any more taxes than would be required if the percentage had been uniform against the main line, side tracks and buildings. If, as said by counsel, the assessors "lumped off" this assessment against plaintiff, they got "lumped" for less than any other tax payer of the district. Plaintiffs' benefit assessment is 16 per cent of the assessed valuation of their property, while the assessment against the DeQueen and Eastern Railroad is 31½ per cent and all other property of the district 54½ per cent of the assessed valuation.

Counsel call attention to the fact that the tracts of land shown on page 32 of the record are assessed on an average of $4.13 an acre. If they had turned to other pages they would have noticed that the assessment per acre on the average is a great deal more. At page 52, we find the following:

John Winkeham,	20	acres,	Assessment...	$300.00
H. R. Johnson	80	"	" ...	800.00
J. R. Hopson	80	"	" ...	650.00
Same	160	"	" ...	1300.00
W. E. Clark	5	"	" ...	300.00
J. B. Lowery	5	"	" ...	80.00

At page 62, the following appears:

Arthur Bandy,	10	acres,	Assessment.	$300.00
Nora Wilder	4	"	"	400.00
T. W. Graves	2½	"	"	300.00
Arthur Bandy,	5¼	acres,	Assessment.	450.00
So. Land & T. Co.	3.68	"	"	100.00
D. & E. R. R. Co.	6½	"	"	180.00
R. A. Gilliam	7	"	"	100.00
J. C. Arnold	¾	"	"	300.00
Laura Aubrey	1.12	"	"	50.00

Or turn to page 72 and we find the following:

Jno. F. Cox,	.60	acres,	Assessment.	$200.00
W. D. Shannon	2½	"	"	400.00
Sarah Wilson	3.30	"	"	150.00
Geo. Holman.	3	"	"	500.00
Jim Neal	1	"	"	100.00
D. H. Harris Est.	10	"	"	400.00
E. C. Skinner Est	1	"	"	250.00

It is very misleading to select one page of the assessment record and strike an average of the assessed value per acre for the purpose of trying to show that the acreage property of the district is very much under-valued.

Counsel also contend that the assessments of property in the several zones does not amount accurately to 40 or 50 or 60 per cent. We submit that this is no concern of plaintiffs. If some farmer's land is assessed four or five per cent higher than his neighbor he had the oportunity to appear and make complaint. If the other property of the district is paying its just pro rata of taxes, plaintiffs are not prejudiced if the burdens are not borne equally as between the others.

Counsel complain because after the assessment was filed, the county court upon objections being filed, made a 40 per cent reduction on some property in the town of DeQueen, and that the record does not state why the reduction was made. Plaintiffs do not undertake to show that the reduction should not have been made. It may be that this acreage property and town lots were in several of the road districts that begin at DeQueen and that plaintiff's property is not in as many districts as the reduced property, or, if in as many districts, that it is benefited by each improvement in proportion to the benefits assessed in each, whereas the improvement by defendant district would not benefit the property in the town of DeQueen as much as the benefit assessment as originally filed. It may be that the county court was of the opinion that town lots in DeQueen would not be benefited as much in proportion to their assessed value as town lots in Lockesburg, because the improvement extending through and beyond Lockesburg, would bring to it trade that had been going to Nashville and the improvement would furnish the people of Lockesburg a good road to DeQueen, the county seat and the principal town of the county, and on the only trunk line railway through the county. It may be that the county court took the position that farm lands would be benefited more in proportion to the assessed value than Lots in DeQueen, because the farmers would be provided with a road over which they could market their products. Numerous reasons can be offered why the reduction should have been made. Since plaintiffs' property

is not required to be valued on the same basis as acreage property or town lots, the reduction on the property mentioned does not invalidate the assessment against plaintiffs. At all events the plaintiffs have not undertaken to show that the reduction was not proper and just. There was no reduction upon the property of the other railroads or other public service companies.

Counsel after objecting that the assessment against lots and acreage property in the town of DeQueen were reduced by the county court, proceed to argue that the assessment against some of the lots are excessive, and specify three lots upon which the benefit assessments are in excess of the general assessment of value. It is perfectly apparent that on the three lots mentioned, buildings had been erected between the time that the county assessment was made and the time of making the benefit assessment, and the district assessors took into consideration the value of the lots as enhanced by the improvements, therefore, the benefit assessment is in excess of the value as placed on the naked lots by the county assessor. Counsel point to three lots where the benefit assessment is from five to fifteen per cent of the assessed value. This was explained by one of the assessors, who stated that this was a clerical error made by placing two of the figures in the cent column instead of the dollar column. (Rec. 250.) Naturally, some mistakes will occur in a matter of this kind when there so many assessments to record. Some errors may have been made in transcribing the record. No doubt these clerical errors have long ago been corrected.

Even a few instances of unequal assessments would not invalidate the whole assessment. No assessment is ever perfect. The law makes adaquate provision for the correction of errors and for re-assessments.

"An assessment will not be held void because there may not be an exact and mathematical relation between the cost and benefit in particular instances."

Butters v. *City of Oakland,* U. S. Adv. Ops. 1923-24, p. 13.

"Absolute equality is impracticable in taxation, and is not required by the equal protection clause of the Constitution."

Maxwell v. *Bugbee,* 250 U. S. 525.
St. Louis S. W. R. Co. v. *Arkansas ex rel. Norwood,* 235 U. S. 350.
Withnell v. *Rucking Constr. Co.,* 249 U. S. 263.

Acreage basis is not proper for assessing benefits to property or plaintiffs.

Counsel devote considerable space to their calculations, in an effort to show that plaintiffs property is assessed more per acre than the other property of the district. The uses to which plaintiffs' property is put and the manner in which it will be benefited, is so entirely different to that of the other property, that an area assessment would be absurd. This Honorable Court has so recently and so often decided against the position of plaintiffs upon this point, that we would not reply to it, but

for the purpose of showing that even if an "area" basis was proper, plaintiffs property being located in DeQueen, should be assessed on the same basis as the other lots in the town are assessed.

Counsel are in error in assuming that all the area within the corporate limits of DeQueen and Lockesburg, is platted property. There is much acreage property. The record shows that there are 94 blocks in DeQueen, which would be approximately 100 acres instead of 500 acres as stated by counsel and the assessment per acre is $700.00 instead of $148.71. There are 61 blocks in Lockesburg. The blocks are 200 feet square and less than one acre to the block, therefore, there are less than 61 acres of platted property in Lockesburg, instead of 600 acres, and the benefit assessment is $531.50 per acre instead of $53.15, as stated by counsel. Counsel have called attention to the fact that there are 798 inhabitants in Lockesburg. If Lockesburg contained 600 acres of platted land there would be 4,800 platted lots, or six times as many lots as there are inhabitants.

Counsel in estimating the number of acres occupied by plaintiffs in DeQueen, limits the calculation to two miles of right of way, 100 feet wide, approximately 24 acres. Counsel do not take into consideration the area occupied by the side tracks, shops, round house and other buildings connected with their freight division. Even upon an area basis, plaintiffs are not assessed as much as the platted property in DeQueen that adjoins property of the plaintiffs. And in arriving at the average assessed benefits per acre to the farm prop-

erty as shown on page 47 of plaintiffs brief, it is not fair to select a limited number of the tracts, and especially to select tracts of ten acres or more. The record shows that tracts under ten acres are assessed proportionately much higher per acre. This is because the improvements are added and it makes the smaller tracts figure much more per acre.

"Railroads differ in so many respects from other properties that they may as a class be taxed differently or additionally, if that is not inconsistent with the Constitution of the state."

Southern Ry. Co. v. *Watts et al,* S. C. R., Vol. 47, 192.

There is no double assessment against plaintiffs' property.

At page 43 of plaintiffs' brief is mentioned four pieces of property upon which it contended that there is a double assessment. At page 141 of the assessment record will be found the following:

Name	Subd. Land.	Acre.	Pres. Value.	Corrected Benefit
Tex. F. S. Ry. Co.	All W of K. C. S. NW NE.	16	$300.00	$150
Same	A strip of land 200 ft. wide along K. C. S. Ry., NW NE.	6	80.00	40
Suduth, P. H.	E 18 A NW NE.	18	200.00	100
Tex. Ft. S. Ry. Co.	All W of K. C. S. R. in SW NE½.	24	600.00	300
K. C. S. S. R. of Way.		5	100.00	50
K.C.S. Ry. Co. & T. & F. S. Ry. Co.	W. 935 ft. of SE¼, except R. of W. heretofore named.	45.40	1600.00	960

The extension of the $50.00 assessment against five acres described as right of way is evidently an error. The number of acres, value and assessment, show that it was not intended as a benefit assessment against plaintiffs right of way property. The acreage property was copied from the books of the county assessor and such officer does not assess the right of way of railroads. There has evidently been something omitted from the description of the five acre tract. In the lower courts there was no question raised concerning this assessment and no opportunity afforded the assessors to explain it. The acreage property above described was properly assessed. There is no proof that it was listed by plaintiffs with the State Tax Commission or that it was considered by the Commission in making its assessment of plaintiffs property that is used for railroad purposes. We find that one parcel is described as "W 935 ft. of SE¼ except right of way." This shows that it was not intended to assess the right of way. If plaintiffs had shown in the lower courts, when called upon to make complaint of any errors in their assessments, that any property was doubly assessed, correction would have been made. No such complaint was made. Plaintiffs resisted the assessment on the grounds that they were not benefited by the improvement. Plaintiffs cite the case of *Railway Company* v. *Bridge District*, 239 Fed. 729, where the court found that the evidence showed that the assessors had assessed fourteen acres of the railroad's land, ten acres of which were used as terminal yards, containing

round house, etc. There is no proof that this acreage property is used for railroad purposes. Counsel say that: "An examination of the record shows that in addition to the benefit assessment assessed against plaintiffs and which are complained of in this suit, *there were also other assessments of benefits against lands of the plaintiff.*" Counsel concede that no complaint was originally made about the assessment on the lands described as acreage property or the five acres described as right of way. They cannot raise this question here for the first time.

"Errors not assigned on appeal to the highest state court will not be considered by the Federal Supreme Court on writ of error."

Bullen v. *Wisconsin,* 240 U. S. 625.
Chicago I. & L. R. Co. v. *Hackett,* 228 U. S. 559.
Selover & Co. v. *Walsh,* 226 U. S. 112.

As we have stated there is no double taxation of plaintiffs' property, but even if there is, it does not contravene the Fourteenth Amendment.

"The Fourteenth Amendment no more forbids double taxation than it does doubling the amount of the tax, short of confiscation or proceedings unconstitutional on other grounds."

Ft. Smith Lumber Co. v. *State of Ark. ex rel,* Arbuckle, Attorney General, U. S. 64 Law Ed. 532.

Plaintiffs object here, for the first time, that church, school, county and city property was not assessed. They had just as well object because the cemeteries of the district are not assessed. All public property is exempt from such assessments. The Supreme Court of Arkansas holds that an assessment benefit for local improvements is not a tax within the sense that the term is used in constitutional provisions regulating the assessment and collection of taxes and exempting certain property from taxation, but that property of the state and all of its political subdivisions are exempt from improvement district assessments, because to levy such a tax or assessment upon such property would render necessary new taxes to meet the demands of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself, and no one would be benefited but the officers employed whose compensation would go to increase the useless levy.

Board of Improvement v. *School District*, 56 Ark. 354.
Ahern v. *Improvement District*, 69 Ark. 68.

Church property not being used for government purposes is subject to the assessment provided it is benefited by the improvement. It will be presumed that those clothed with the authority to make the assessment decided that church property was not benefited, and in the absence of any showing by plaintiffs that it was benefited, they cannot complain.

At pages 45-7 of their brief, counsel again discuss the assessment of the farm lands of the district. We do not deem it essential to discuss this proposition further than to call attention to the erroneous statement that one of the assessors testified that "the farm lands were worth $25.00 to $50.00 per acre." The witness stated that *the best, highest priced and best improved lands in the district* were worth from $25.00 to $50.00 per acre (Rec. 376). There is a vast difference between what the witness said and what plaintiffs quote him as saying. Some of the land is assessed at more than fifty dollars an acre.

Counsel are again in error in quoting Witness Grady, one of the assessors, that his land was worth $50.00 an acre. He testified that it was worth that before the overflow but not so much since then; that his forty acres with no buildings on it and only fifteen acres in cultivation was assessed at $300.00 and the benefit assessment was $180.00. Let us assume that his land is worth $2,000.00 or $50.00 an acre, then under the rule in Arkansas of making assessments on a 50 per cent basis, the assessed value would be $1,000 and his benefit assessment being $180.00, is 18 per cent of that amount. Plaintiffs' property is assessed at 16 per cent of its value as per assessment made on a 50 per cent basis. Calculated either upon the basis of assessment for general taxation purposes or upon actual values, plaintiffs' benefit assessment is less than any property owner in the district. As compared with other property in either DeQueen

or Lockesburg, upon an acreage basis, plaintiffs' assessment is the least.

The record shows that there was an honest effort to make a fair and just benefit assessment against the property of the district. If there was any discrimination the plaintiffs are the beneficiaries. There is no proof of any "fraudulent, capricious or arbitrary action" on the part of any of the officials of the district in making the assessment.

The findings of the State Supreme Court that the Assessment of benefits against the property of the defendant is not excessive, will not be disturbed by the Federal Supreme Court on writ of error.

Waters Pierce Oil Co. v. *Texas*, 212 U. S. 86.
Rankin v. *Emich*, 218 U. S. 27.
Willoughby v. *Chicago*, 235 U. S. 45.

Certainly it cannot be said that there has been "a discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law." If the assessment in this case will not produce "approximately correct general results," then it is impossible to make an assessment that will do so.

The benefit assessment in this case is less, proportionately, to the other property in the district, than it would have been if the assessment had been made on the same basis as was made by the assessment approved in *Branson* v. *Bush, supra.* Therefore plaintiffs cannot complain that the

statute laid down no iron rules to govern the assessors.

An attack upon constitutional grounds because of the system adopted in making an assessment can only succeed if it has produced results as to plaintiffs in error's property palpably arbitrary or grossly unequal.

Withnell v. *Ruecking*, 249 U. S. 263.

V.

The Special Act of the Legislature of Arkansas Confirming the Assessment of Benefits Cured Any Defects in the Assessment.

The assessment was approved by Act No. 98, of the General Assembly of the State of Arkansas, approved February 7, 1920. The sections relating to the assessment read as follows:

> "Section 2. The assessment of benefits in said Road Improvement District Number Three of Sevier County, now on file with the county clerk of the county, as confirmed by the order of the county court of that county on November 21, 1919, and found and declared to be equitable and just, and fairly to represent the benefits that will accrue to each tract and parcel of land and right of way in said district, from the making of the improvement therein, and each of said assessments of benefits is confirmed and made the assessment of benefits in said district.
>
> Section 3. The improvement in said Sevier County Road Improvement District Number

> Three, as shown by report of the commissioners therein to the county court, filed July 15, 1919, and approved by the order of the county court on that date, are approved and confirmed. The commissioners are ordered and directed to make the improvement in accordance with said plans; and the confirmation of the assessment of benefits and the finding of the benefits in said district made by this act, are based on the improvement to be made according to said plan."

It has been repeatedly held that the Legislature may assess the benefits in an improvement district or may confirm assessments as made by the assessors.

It will be observed that the Act is broader in its scope and effect than a mere "curative" statute. It is similar to the Act construed by the Supreme Court of Arkansas in the case of *Davies* v. *Chicot County Drainage District*, (112 Ark. 360), where the court, quoting from the opinion in the case of *Sudberry* v. *Graves* (83 Ark. 344), said: "It is broader than a mere curative act in its scope and effect. It is equivalent to a declaration that the amount assessed by the viewers and approved by the county court were proper according to the benefits to be received by each tract of land, and a legislative adoption of those amounts as a re-assessment of the proportionate part as the cost of the improvement to be paid upon those lands. The Legislature had the power, in the first instance, not only to fix the boundaries of the district but to determine the cost of the improvement and to

assess the cost proportionately upon the several tracts of land according to the legislative estimate of benefits, without delegating to any subordinate board, or officers, the duty and power of fixing the assessment. (*Coffman* v. *St. Francis Drainage District,* 83 Ark. 54. *Parsons* v. *District of Columbia,* 170 U. S. 45.) In other words, the Legislature could in the first place have levied the assessment itself, subject only to the right of the assessed land owner to have an arbitrary abuse of that power reviewed by the courts, and it can therefore adopt as correct the assessment made by the viewers and county court, treating the act of adoption as a re-assessment of the lands by the Legislature. We see no reason why the Legislature can not, if it had the power in the first place to determine for itself the proportionate amounts to be assessed against the lands in the district, determine now that the apportionment made by the viewers and confirmed by the county court was correct and assess them against the land."

It would be absurd to hold that the Legislature could in the first instance make the assessment, but could not confirm or adopt an assessment made by the assessors of the district and approved by the county court. Such approval by the Legislature is tantamount to an assessment by the Legislature in the first instance.

Tims v. *Mack,* (147 Ark. 112).

Counsel cite the case of *Thibault* v. *McHaney*, (119 Ark. 188), where the court held unconstitutional a validating act, *because the uncontroverted evidence showed that the cost of the improvement exceeded the benefits. That decision is not in point in the instant case at all.*

It is not contended here that the cost of the improvement will exceed the benefits.

In the case of *Coffman* v. *St Francis Drainage District* (83 Ark. 54), cited by counsel, the plaintiff filed a complaint in equity against the assessment made against his land by the act creating the district, alleging that the ditch would render his land valueless and unfit for cultivation.

The Supreme Court held that the lower court erred in sustaining a demurrer to the complaint. There is no contention here that the road improvement will render the railroad property "valueless and unfit for use."

Counsel cite the case of *Kirst* v. *Street Improvement District* (86 Ark. 1), where the court held that the evidence showed that the assessment was made upon a frontage basis, entirely excluding the valuation of the property. The court said: "In determining the benefits to accure to each piece of property in an improvement district, as required by Kirby's Digest, Sec. 5677, the assessors are required to make a fair and just estimate of the benefits which each tract of land, including buildings, will receive by reason of the improvement, and may adopt a precentage of the valuation of the property, including the buildings, as the value of the benefits, if in their judgment such

a method best reaches the true measure of benefits thereto, *or may adopt any other method that will reach the same result.*"

In the case of *Peay* v. *City of Little Rock* (32 Ark. 31), cited by counsel, the court held that an ordinance creating a Municipal Improvement District was invalid, because it made the assessment according to frontage instead of value and was therefore in conflict with the State Constitution of 1868, which was in effect at that time. The statute now under consideration, the assessment thereunder and the act confirming the assessment, do not conflict with any provisions of the present Constitution of the State. Furthermore the decision in *Peay* v. *State,* was, in effect, overruled by the decision in the case of *Board of Improvement* v. *School District* (56 Ark. 354), and *Davis* v. *Gaines* (48 Ark. 370). The later cases holding that assessments and taxes do not have substantially the same meaning.

Counsel for plaintiffs cite the case of *Road Improvement Dist.* v. *Missouri Pacific Railway* (275 Fed. 600), as their authority for the position that a Legislative approval of an assessment by the board is not tantamount to an original assessment by the Legislature, because the action of the board is in its nature judicial, in such a sense that property owners are entitled to a hearing before the questions are determined.

The Supreme Court of Arkansas has decided in numerous cases that:

> "The function of the board of assessors of a road improvement district in assessing bene-

fits, and of the board of commissioners in adjusting them, is not judicial in the ordinary sense, but in the nature of a legislative power."

Monett Road Imp. Dist. v. *Dudley,* 144 Ark. 169.
Missouri Pacific Railway Co. v. *Izard County Highway Imp. Dist.,* 143 Ark. 261.
Payne v. *Road District,* 149 Ark. 491.

In this case the Supreme Court said:

"An affirmance of the judgment in this case might be rested entirely on the confirmation of the assessment by the statute cited above. There is no reason why the statute is not applicable, for we have decided that even during the pendency of litigation a statute may be enacted ratifying and confirming assessments.' (Rec. 312.)

"In the exercise of the appellate jurisdiction of the Federal Supreme Court over State Courts, the former court is bound by the construction of a State Law adopted by its court of last resort."

Ward & Gow v. *Krinsky,* 259 U. S. 503.
Thornton v. *Duffy,* 254 U. S. 361.
Farncomb v. *Denver,* 252 U. S. 7.
Munday v. *Wisconsin Trust Co.,* 252 U. S. 499.
Wagner v. *Lesser,* 239 U. S. 234.

Defendants do not contend that an assessment for an improvement made by the Legislature or

the confirmation by the Legislature of an assessment made by the assessors of the district, is in every case absolutely final, but that such legislative determination cannot be assailed under the Fourteenth Amendment, unless it is shown that such action is

"Arbitrary, wholly unwarranted, a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property."

Branson v *Bush*, 251 U. S. 151.
Wagner v. *Leser*, 239 U. S. 207.
Houck v. *Little River Drainage District*, 239 U. S. 254.
Withnell v. *Rueckling*, 249 U. S. 263.
Hancock v. *Muskogee*, 250 U. S. 454.
Embree v. *Kansas City & L. B. Road Dist.*, 240 U. S. 242.
Kansas City So. Ry. Co. v. *Road Improvement Dist.*, 256 U. S. 661.
Goldsmith v. *Prendegrast*, 252 U. S. 12.
Thomas v. *K. C. S. Ry. Co.*, 261 U. S. 481.
Baker, Receiver v. *Druesedow, Collector*, U. S. Adv. Ops., 1923-24, page 53.
Butters et al. v. *City of Oakland*, U. S. Adv. Ops. 1923-24, page 43.

Assessments will be sustained unless arbitrary and unjust.

Gibson v. *Spikes*, 143 Ark. 270.
Bennett v. *Johnson*, 130 Ark. 507.
Hines v. *Road Imp. District*, 145 Ark. 382.
Reisinger v. *Road Imp. Dist.*, 143 Ark. 341.
Marshall v. *Baugh*, 133 Ark. 64.
Van Hook v. *Wallace*, 143 Ark. 203.
Patterson v. *Road Imp. Dist.*, 143 Ark. 44.

Missouri P. R. Co. v. *Izard County Highway Dist.*, 143 Ark. 261.
Wilkinson v. *St. Francis Co. Road Imp. Dist.*, 141 Ark. 164.
Missouri Pac. R. Co. v. *Monroe County Road Imp. Dist.*, 137 Ark. 568.
Nettles v. *Hazelwood Road Imp. Dist.*, 144 Ark. 632.
Tims v. *Mack*, 147 Ark. 112.

In local matters this court is loathe to interfere with the public policy of the respective states.

Franch v. *Barber Asphalt Paving Co.*, 181 U. S. 324.
Nickel v. *Cole*, 256 U. S. 222.
Schneider v. *Gast Realty & Investment Co.*, 245 U. S. 288,
Thornton v. *Duffy*, 254 U. S. 361.
Pa. R. Co. v. *Towers*, 245 U. S. 6.
Wells F. & Co. v. *Nevada*, 248 U. S. 165.
Green v. *Frazier*, 253 U. S. 233.
Pure Oil Co. v. *Minnesota*, 248 U. S. 158.

Plaintiffs' property was assessed under a valid statute of the state. A statute that has been construed and upheld in the numerous cases cited. The assessment was confirmed by the Legislature and this was tantamount to an assessment originally by the Legislature. The assessors made an honest effort to apportion the assessment in proportion to the benefits that the property would receive by reason of the improvement. It may not be mathematically correct but the general results will be approximately correct. Plaintiffs were

given notice and were heard when the assessment was presented to the county court for approval. They were heard in State Circuit Court and the State Supreme Court. In every forum it has been held that the assessors did not act arbitrarily. Before plaintiffs are entitled to relief it must be believed that they have shown that the State Tax Commission wrongfully assessed their property for general taxation and that the county assessor wrongfully assessed the other real estate of the district for general taxation; that the assessors of the defendant district acted arbitrarily and in a manner wholly unwarranted and that the assessment will confiscate plaintiffs' property. In other words that everybody is wrong except the plaintiffs. Plaintiffs' assessment is less in proportion than any other property owner of the district. Less than the other railroad property of the district. Less than the other public utility property owners. Less than town lots adjacent, whether calculated on assessed values or an area basis. Less than farm lands when calculated on a basis of value. Less in proportion to the benefits to its property, by reason of the improvement. The facts are entirely different to the facts in the case of plaintiffs against the Little River County Improvement District (256 U. S. 661). The facts are more like the case of *Branson* v. *Bush* (251 U. S. 181). The assessment is not as high proportionately against plaintiffs as it was against the railroad in the *Branson* v. *Bush case*. There the assessment for general taxation purposes was the basis for the benefit assessment for all the

property of the district. Upon the same basis plaintiffs' property is assessed less than half of the other railroad property of the district and not one-third as much as the farm lands and town property.

We respectfully submit that the decision in this case should be affirmed.

Respectfully submitted,

HAL L. NORWOOD,
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Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 33.—October Term, 1924.

Kansas City Southern Railway Company, et al., Plaintiffs in Error, *vs.* Road Improvement District No. 3 of Sevier County, Arkansas, et al.	In Error to the Supreme Court of the State of Arkansas.

[December 15, 1924.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This case presents a controversy over the constitutional validity of an assessment of benefits accruing to railway property from the improvement of a public road in Sevier County, Arkansas.

The road reaches from DeQueen, the county seat, to the eastern border of the county, eighteen miles. It had been a mere dirt road, not good in any season and impassable at times. The improvement consisted in reducing objectionable curves and grades, installing modern bridges and culverts, reconstructing the roadbed, putting on a hard and durable surface and generally fitting the road for economical and expeditious rural travel and transportation. To accomplish the improvement a road district covering approximately three miles of territory on either side of the road was created under a general law of the State, secs. 5399 *et seq.*, Crawford & Moses Digest, 1921. Money to pay the cost of the improvement, estimated at $200,000, was to be obtained primarily through an issue of interest bearing bonds and ultimately through a special tax spread over a period of twenty years. The tax was to be laid on all lands, town lots, railroads and other real property within the district in the proportions in which they would be benefited by the improvement. Assessors appointed by the county court were to assess the benefits and to set forth in their report the name of the owner of each parcel, a description of the property, its "present assessed value" for general taxing purposes, and the amount of benefits assessed to it. When completed the assessment was to be filed in the county court, a time

for hearing parties in interest was to be fixed and public notice thereof was to be given. The court was to review the work of the assessors and to equalize, lower or raise the assessment of benefits to particular parcels as justice might require. An appeal could be taken to the circuit court, which was to give a hearing *de novo* in respect of such objections as were set forth in the affidavit for appeal; and a further appeal could be taken to the Supreme Court of the State. A comprehensive statement of the various steps to be taken in the proceedings and of their nature is given in *Commissioners, etc.* v. *St. Louis Southwestern Ry. Co.*, 257 U. S. 547.

Within the road district, at DeQueen, are two miles of main track, nine miles of side tracks, a depot and other buildings, which form part of a railway line, called the Kansas City Southern, which extends from Kansas City, Missouri, to Port Arthur, Texas. The assessed value for general taxing purposes of this railway property within the district was $129,615. The district assessors assessed it with benefits amounting to $21,270, or approximately 16 per cent of its assessed value. The assessed value of the farm lands and town lots within the district for general taxing purposes was $897,660. The district assessors assessed them with benefits amounting to $448,354, or approximately 54 per cent of their assessed value. Other property in the district, not requiring special notice here, was assessed with benefits amounting to $40,409. Thus the aggregate of the benefits assessed was $510,033. The special tax amounted to 70 per cent of the benefits assessed, or 3½ per cent per annum for twenty years—the full tax being intended to cover the bond issue with interest. The portion of the tax laid on the railway property was $14,899, or $744.45 per annum.

In regular course the assessment was reviewed by the county court and confirmed, the court finding that the lands and other real property in the district would be "greatly benefited" by the improvement and that the assessment of benefits was "fair, just and equal to all land owners."

Two companies interested in the railway property appealed to the circuit court and in the affidavit for appeal assailed the assessment, in so far as it affected them, on the grounds, first, that it was purely arbitrary, and therefore in contravention of the due

process of law clause of the Fourteenth Amendment to the Constitution of the United States, because the railway property neither would nor could receive any benefit from the improvement of the road; secondly, that it was not in accord with the equal protection clause of that Amendment, because the railway property on the one hand and the farm lands and town lots on the other were assessed with benefits in grossly unequal proportions, to the detriment of the railway property, and, thirdly, that it was made in disregard of the commerce clause of the Constitution of the United States, because the benefits assessed to the railway property were not such as would or could accrue to that property, but were such as would accrue, if accruing at all, to the interstate business in which that property was being used, and therefore could not be made the basis of a special improvement tax without burdening interstate commerce.

While the appeal was pending in the circuit court the state legislature passed a special act (No. 98, approved February 7, 1920) recognizing the creation and boundaries of the district, approving the plans for the improvement of the road, confirming the assessment of benefits as sustained by the county court and declaring that the assessment "fairly represents the benefits that will accrue" to the railway property and other tracts in the district. The companies then took the position that the legislative confirmation was open to the same constitutional objections that were made to the original assessment.

A hearing was had in the circuit court at which the companies assumed the burden of establishing that their objections were well founded in so far as they turned on matters of fact. Much evidence was produced on both sides. The greater part was addressed to the question whether the railway property within the district would receive any substantial benefit from the improvement. The witnesses differed pronouncedly. Some expressed positive opinions on the subject without advancing anything of substance in support of their opinions. This was true to a greater degree of the witnesses for the companies than of those for the district. Some of the latter referred to and detailed conditions and transactions tending to give their opinions strong support. Among other things, they testified that theretofore the lands in the vicinity of the road had necessarily been put

to uses which made only a light contribution to the tonnage and business of the railway; that the lands were naturally well adapted to other uses, such as growing fruits and vegetables, but could not profitably be used for these purposes in the absence of road facilities for getting the products to places of shipment expeditiously and without injury from jolting; that when plans for the improvement of the road were adopted fruit growing and truck farming began to displace the prior uses; that at the time of the hearing, which was after one-half of the road was completed and the rest graded, the new crops were being grown and sent to distant markets in large and increasing quantities; that these products were hauled over the new road in motor trucks to DeQueen and Locksburg, those taken to Locksburg being then forwarded over a short local railroad to DeQueen; that all were there shipped over the railway—the one in question—to Kansas City and other points beyond, and that there was no other railway leading to available markets. The same witnesses further testified that the change from the old to the new uses was still progressing; that other lands tributary to the new road and not cultivated before were being prepared for cultivation, and that timber and other heavy products which could not reach the railway before were being hauled over the new road and shipped out in substantial volume. On the question of discrimination the evidence was meagre. The assessed value of the railway property for general taxing purposes was conceded to be about one-half its actual value. On the basis of assessed values, that property was assessed with a much lower proportion of the total benefits than the farm lands and town lots were, the proportional relation being that of 16 to 54. There was some evidence of instances in which the assessed value of farm lands and town lots for general taxing purposes was less than one-half their real value, but there was no evidence that this was general. Even in the instances named the benefits assessed were generally much in excess of 16 per cent of one-half the real value. There was no evidence of an intentional over assessment of benefits to the railway property or of an intentional under assessment to the farm lands and town lots. The three assessors testified that they assessed all the property in the same way—according to the benefits which in their judgment the particular parcels would receive from the improvement of the road.

The circuit court was of opinion on all the evidence that the improvement would bring to the railway a very substantial increase in tonnage and business at DeQueen; that this would enlarge its receipts and net revenue and thereby materially benefit its property at DeQueen, and that the assessment of benefits to that property was neither arbitrary nor unreasonably discriminatory but just and fair. On that determination of the issues of fact the court entered a judgment overruling the objections and upholding the assessment. The companies appealed to the Supreme Court of the State and it affirmed the judgment, 156 Ark. 116. That court put its decision on two grounds taken collectively—one that the special confirmatory act constituted a legislative determination of the correctness of the assessment, which could not be overturned unless found to be obviously arbitrary or unreasonably discriminatory, and the other that there was ample evidence to sustain the findings of the circuit court, which negatived the existence of any such error, and that the circuit court's solution of the conflicts in the evidence was not open to review on appeal.

The companies brought the case here on writ of error and afterwards presented a petition for certiorari, consideration of which was passed to the hearing on the writ of error. As the constitutional validity of the special confirmatory act was directly challenged in the state courts and sustained by them, the case is properly here on the writ of error; so the petition for certiorari will be denied.

The objection based on the commerce clause of the Constitution has been abandoned, but those based on the due process of law and equal protection clauses of the Fourteenth Amendment are pressed on our attention.

By a long line of decisions in this Court it has been settled that, where the state constitution as construed by the state court of last resort does not provide otherwise, the legislature of a state may require that the cost of a local public improvement, such as the construction or reconstruction of a public road, be distributed over the lands particularly benefited and charged against them according to their value, their area or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits, and may avail itself, for the purposes of that determination, of any information which

it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power, can it be said to offend the due process of law clause of the Fourteenth Amendment. *Spencer* v. *Merchant*, 125 U. S. 345, 355-357; *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324, 338, *et seq.*; *Houck* v. *Little River Drainage District*, 239 U. S. 254, 262, 265; *Myles Salt Co.* v. *Iberia Drainage District*, 239 U. S. 478, 481; *Branson* v. *Bush*, 251 U. S. 182, 189; *Valley Farms Co.* v. *County of Westchester*, 261 U. S. 155, 163. And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the legislative determination be said to contravene the equal protection clause of that Amendment. *Kansas City Southern Ry. Co.* v. *Road Improvement District No. 6*, 256 U. S. 658; *Thomas* v. *Kansas City Southern Ry. Co.*, 261 U. S. 481.

To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate, *Valley Farms Co.* v. *Westchester County, supra;* but it is essential that they have a better basis than mere speculation or conjecture. *Kansas City Southern Ry. Co.* v. *Road Improvement District No. 3, supra.* In the case of railway property they may consist of gains from increased traffic reasonably expected to result from the improvement. *Thomas* v. *Kansas City Southern Ry. Co., supra; Branson* v. *Bush, supra.*

The special confirmatory act was recognized by the Supreme Court of the State as a legislative determination of the lands which will be benefited and of the proportions in which they will share in the benefits. It therefore must be treated here as an admissible legislative assessment of benefits so far as the state constitution is concerned.

The evidence, as before outlined, falls short of showing that the assessment against the railway property was either palpably arbitrary or unreasonably discriminatory. The burden was on the railway companies to overcome the presumption attending the legislative determination, and this they failed to do; for, under the evidence produced, it is an entirely admissible view that the railway property will be substantially benefited by the

road improvement and that the benefits are fairly assessed as between that property and the farm lands and town lots. True, the amount of benefits which will accrue to the railway property is largely a matter of forecast and estimate; but the same thing is true of the farm lands and town lots, and also of benefit asssessments in general. See *Louisville and Nashville R. R. Co.* v. *Barber Asphalt Paving Co.*, 197 U. S. 430, 433; *Butters* v. *Oakland*, 263 U. S. 162, 165. Forecast and estimate based on a solid premise of fact and experience are not to be confused with mere speculation and conjecture.

The road in question extends, at right angles to the railway line, a distance of 18 miles into a country well adapted to supplying large traffic for the railway when the improvement is completed. Adjacent to the road, as is conceded in the brief for the railway companies, are 1587 tracts of farm lands of less than 80 acres and 246 tracts of a larger acreage. The only practicable route to available markets is through DeQueen and over the railway. These facts, together with the affirmative evidence of what was undertaken and done in the way of growing new crops and shipping them out over the railway as soon as the improvement was well under way, illustrate that there was a real basis for assessing the railway property at DeQueen with substantial benefits. Had the companies recognized this and devoted themselves to showing that the amount of benefits assessed to their property was excessive instead of attempting to show that it would receive no benefits whatever, they possibly might have made a better case. But that course was not taken; and necessarily the state courts rested their decision on the evidence that was presented. That evidence fairly admitted of the view, taken in those courts, that the assessment was not excessive.

The companies make a contention which may be summarized as follows: Assume that the improvement will bring to the railway, at DeQueen, an increased tonnage and business yielding gross receipts amounting to $10,000 a year. According to the evidence one-fourth of that sum, or $2,500, will be net revenue. This increase in net revenue must be spread over the entire railway, which is 800 miles long. The portion assignable to the two miles of main line within the road district is $6.25. This sum capitalized on a

six per cent basis, which gives $104.16, represents the full benefit to the railway property within the district.

The contention is faulty in several respects. The increased traffic will not be carried from one end of the railway to the other, but only from DeQueen to Kansas City. The railway property within the district includes much more than the two miles of main track. Doubtless, the increased traffic will in a way benefit the railway as a whole; but the traffic will be appurtenant to the portion of the railway at DeQueen, and will specially enhance the importance and value of the property there as a part of the line.

Other contentions are advanced which need not be specially noticed here, because they are shown to be quite untenable in the decisions before cited.

We conclude that the objections made to the assessment on constitutional grounds are not well taken.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.